



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8057-98

1 April 1999

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 March 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 24 June 1975 for three years at age 18. The record reflects that you were promoted to SGT (E-5) on 28 February 1978 and served without incident until 21 June 1978 when you failed to report from leave and were reported in an unauthorized absence (UA) status. You remained absent until 7 July 1978 when you surrendered to a unit in Pasadena, CA. A 10 July 1978 message to Commandant of the Marine Corps (CMC) requested that you be attached to that unit for 30 days due to personal matters. The message stated that an aunt and uncle who raised you had been fired and they had no source of income. It was further noted that you were within the 90-day window for early discharge as an overseas returnee. A message on file in the record shows that CMC and your parent command were notified that you had reported to the movement center at Camp Pendleton on 18 July 1978 for a return flight, but on 20 July 1978 you went UA. On 28 July 1978, CMC notified the unit in Pasadena and your parent command that a request for humanitarian reassignment had been disapproved because it did not meet the criteria for such an assignment.

The record further reflects that you were injured on 5 August 1978 while riding as a passenger on a motorcycle which ran into a parked car. You sustained multiple injuries that included a concussion, multiple fractures, lacerations and bruises. You received initial treatment for your injuries at a local hospital before being transferred to the Naval Regional Medical Center (NMRC), and then to a Veterans Administration hospital. You were transferred back to the NRMC on 17 August 1978 and assigned to the Naval Weapons Station, Seal Beach, CA. On September 1978, an investigation was ordered into the circumstances surrounding the motorcycle accident.

On 13 November 1978 a medical board recommended that you be placed on six months of limited duty with diagnoses of cerebral concussion, and fractures of the skull, left acetabulum, and right femur.

During the months of November and December 1978 you received two nonjudicial punishments (NJP). The first was for two periods of UA from 1-12 November and 15-21 November 1978. Punishment imposed was reduction in rank to CPL (E-4) and 30 days of restriction. The second NJP was for the two periods of UA prior to your accident, 21 June to 7 July and 20 July to 5 August 1978. Punishment imposed was a suspended reduction in rank to LCPL (E-3) and 30 days of restriction.

On 15 December 1978, CMC directed your transfer to the Marine Corps Barracks at Camp Pendleton, CA for six months of limited duty.

On 23 January 1979, the investigating officer (IO) completed his investigation into the circumstances surrounding the injuries you sustained on 5 August 1978. The IO noted that while you were attached to the NRMC you were periodically in a UA status, which caused delays in the completion of the investigation. The IO found that you were UA on 20 July 1978 when you failed to comply with orders requiring you to report to the movement center at Camp Pendleton for return transportation to your parent command, and were still in a UA status at the time of the accident. The IO opined that your injuries indicated that your head was unprotected at the time of the accident, there was no evidence that you were negligent in riding as a passenger on the motorcycle, and that your injuries were not in the line of duty and were not due to your own misconduct.

In a statement in response to the line of duty investigation, you stated that you departed on leave from Okinawa on 5 June 1978 to see your sister graduate from high school. When you arrived

home, you found your family had severe financial problems. You claimed that you cashed your plane ticket in order to feed the family and, on 7 July 1978 you sought assistance from Marine Corps authorities in Pasadena. You went back home that weekend to find your family had left to see an uncle who had some work for them. You asserted that you turned yourself in to the shore patrol after your family returned, and when you arrived at Camp Pendleton you told a GYSGT about your family problems and said that you needed more time. You claimed that you were given a few more days to take care of business. You returned home to find that a gang was after your brother and his wife and had bombed the house you were living in. You stated that you hid out with your family in a hotel. On 4 August 1978 you ran into an old friend you had not seen for three years and went with him on his motorcycle to visit mutual friends. Early the next morning, when returning home, you were involved in the accident.

You received your third NJP on 8 February 1979 for two brief periods of UA totalling about three days. A \$50 forfeiture was imposed and the reduction in rank that was suspended on 2 December 1978 was vacated. The record also reflects that you participated in a six week of inpatient alcohol abuse rehabilitation treatment program from 29 May to 6 July 1979. During this period, you received your fourth NJP for four periods of UA totalling about 26 days.

On 18 June 1979 a medical board found you unfit for full duty and opined that this status would not change with further treatment. You were referred to a physical evaluation board (PEB) with a diagnosis of arthrofibrosis, right hip, secondary to subtrochanteric fracture, right femur, a condition that did not exist prior to enlistment; and alcoholism, which existed prior to enlistment. On 26 July 1979, a PEB found you unfit due to a physical disability that was not incurred/aggravated while entitled to basic pay; not due to intentional misconduct or willful neglect; and was incurred during a period of UA. A medical discharge without disability benefits was recommended. The Commandant of the Marine Corps was notified of the PEB findings on 20 August 1979.

On 22 August 1979, the Commandant of the Marine Corps directed discharge by reason of physical disability without severance pay. You were so discharged on 7 September 1979.

The Board was unable to determine what specific correction you desire. However, in its review of your record, the Board conducted a careful search for any factors which would warrant correcting your record to show that you were not an unauthorized absentee on 5 August 1978; or changing the reason for discharge

to show that you entitled to disability benefits. However, no justification could be found. The Board noted your contentions that, prior to discharge, your UA from 20 July to 5 August 1978 had been "cleared up" by the personnel office, and you were given a pass by the base reception center and told to go home and wait for further instructions regarding your return to Okinawa. However, you provide no corroborating evidence to support your contentions. The Board particularly noted the statement you submitted at the time of the line of duty investigation. In that statement, you claimed that when you arrived at Camp Pendleton you explained that you needed more time to take care of family problems and you were "given a few more days to take care of business." It appeared to the Board if you were given a pass, it terminated on or about 20 July 1995. The Board concluded that you were not given an open-ended authorization to go home to await further instructions.

While you may have felt compelled to assist your family with the serious problems they were allegedly experiencing, their problems did not excuse your UA. It appeared to the Board you did not take any measures to protect yourself from becoming an unauthorized absentee such as requesting emergency leave and verification of your family's circumstances through the Red Cross. The Board found no basis to conclude that your absence at the time of the accident was unavoidable. Individuals who are UA are not in a pay status. Since you were injured while in a UA status, your disability was not incurred while entitled to basic pay. Therefore, you were not entitled to severance pay based on a disability rating. In order to justify correction of a military record, you must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or that you were treated unjustly by the Navy. You have failed to submit any evidence that would satisfy this requirement. Absent persuasive evidence that the contested period of absence was unavoidable, the Board concluded there is no basis for granting your request. Therefore the Board concluded that the reason for discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director