



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8561-98

10 May 1999

[REDACTED]

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 28 April 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 Reserve on 6 January 1993 for eight years at age 19. You were ordered to Initial Active Duty for Training (IADT) on 1 February 1993 and were honorably released and transferred to a Marine Corps Reserve unit in Moundeville, WV on 4 August 1993.

The record reflects that during the five month period from November 1993 to March 1994 you accumulated 16 unexcused drills. On 7 March 1994, you were notified by certified mail that you were being recommended for discharge by reason of unsatisfactory participation in the Ready Reserve. The letter of notification advised you that discharge could be under other than honorable conditions, and of your rights to representation by counsel and presentation of your case to an administrative discharge board (ADB). You were directed to respond by 28 March 1994 and advised that failure to respond, after being afforded a reasonable opportunity to consult with counsel, constituted a waiver of your rights. You acknowledged receipt of the certified letter on 14 March 1994 but failed to contact your unit as to your intentions regarding the recommended discharge.

On 5 May 1994, the commanding officer (CO) recommended your discharge under other than honorable conditions by reason of unsatisfactory participation due to an excessive number of unexcused absences from regularly scheduled inactive duty training periods. The CO noted that since November 1993 you had accumulated 24 unexcused absences. Despite numerous attempts to contact you by phone through your family, you continued to ignore your chain of command. The CO opined that you were either unwilling or incapable of completing your military obligations. On 5 October 1994, the staff judge advocate for Marine Reserve Force reviewed the discharge documentation and found it to be sufficient in law and fact. Thereafter, the discharge authority directed discharge under other than honorable conditions by reason of failure to participate, and assignment of an RE-4 reenlistment code. You were so discharged on 25 October 1994.

An RE-4 reenlistment code means an individual is not recommended for reenlistment. Reenlistment codes are assigned when an individual is released or discharged from active duty to determine their eligibility for retention. A reenlistment code is not assigned upon completion of IADT. Reservists should not be assigned a reenlistment code when discharged. They are either recommended or not recommended for reenlistment.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity. The Board particularly noted your contention that your discharge was the result of your inability to travel three-and-a-half hours from your home in Pennsylvania to West Virginia. You claim that you made numerous requests to be transferred to a unit closer to your home, but the command would not or could not make it happen.

The Board concluded that the foregoing factor and contentions were insufficient to warrant recharacterization of your given the excessive number of unexcused drills which led to your discharge. The Board noted the aggravating factor that you failed to respond to the letter of notification and by doing so, you waived your right to an ADB, the one opportunity you had to show why you should be retained in the reserves or discharged under honorable conditions. The distance you had to travel to attend drills may be a mitigating factor; however, you provide no corroborating evidence regarding the efforts you claimed you made to get assigned to a unit closer to home. Absent persuasive evidence of the circumstances which prevented you from attending regularly scheduled drills, the Board concluded that the discharge was proper and no change is warranted.

The Board finds that removal of the RE-4 reenlistment code to be replaced by "not recommended for reenlistment" would be a meaningless correction. The Board concluded that 24 unexcused drills provides sufficient justification to warrant the discharge

authority's non-recommendation for retention. Therefore, the Board concluded that the assigned reenlistment code in this case was harmless error and does not warrant removal. 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