



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 8284-98

18 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 11 May 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 22 March 1966 at the age of 17. Your record shows that on 9 December 1966 you received nonjudicial punishment (NJP) for two incidents of unauthorized absence (UA) totalling 32 days and an unspecified violation of Article 34 of the Uniform Code of Military Justice. The punishment imposed was correctional custody for 30 days and forfeitures totalling \$50.

Your record further reflects that on 20 October 1968 you began a 393 day period of UA that was not terminated until 18 November 1969. On 16 December 1969 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. Your record shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. However, on 16 January 1970, the discharge authority disapproved your request. Shortly thereafter, on 26 January 1970, you again submitted a written request for an undesirable discharge in order to avoid trial by court-martial. On 12

February 1970 the discharge authority again disapproved your request and referred your case to trail. On 17 February 1970 you were convicted by special court-martial (SPCM) of the 393 day period of UA. You were sentenced to confinement at hard labor for two months, forfeitures totalling \$50, and a bad conduct discharge (BCD). After the findings and sentence were reviewed and approved, the BCD was ordered executed. On 15 May 1970 you received the BCD. Approximately seven years later, on 17 July 1977, your initial discharge was changed and you were awarded a clemency discharge pursuant to Presidential Proclamation 4313.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, combat history, and your contention that you would like your discharge upgraded. The Board further considered your contentions that you had problems adjusting after returning from Vietnam, and there were extenuating circumstances involved in your period of UA. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your lengthy period of UA from the Marine Corps. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Given all the circumstances of your case the Board concluded your discharge was proper as issued 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