



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TJR  
Docket No: 905-01  
25 June 2001

[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 19 June 2001. 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 9 May 1969 at the age of 17. Your record reflects that on 4 June 1969 you received nonjudicial punishment (NJP) for a 16 day period of unauthorized absence (UA) and were awarded correctional custody for 14 days. On 2 February 1970 you received NJP for unspecified offenses. On 26 June 1970 you received NJP for a three day period of UA. The punishment imposed was a \$29 forfeiture of pay and restriction and extra duty for 14 days.

Your record further reflects that on 17 July 1970 you began a 1,580 day period of UA that was not terminated until 14 November 1974. Subsequently, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. 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. Your request was granted and your commanding officer was directed to issue you an other than honorable discharge for the good of the service. As a result of this action, you were spared the stigma of a

court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 14 November 1974 you received an other than honorable discharge. At that time you enrolled in the Reconciliation Service Program with the understanding that if you performed 22 months of alternate service a clemency discharge would be substituted for the undesirable discharge. However, on 12 January 1976, you were terminated from the reconciliation program due to failure to complete the required alternate service.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity. The Board also considered your contention that you did not receive credit for or an upgrade of your clemency discharge, and because of this oversight you have not received veterans' benefits. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your repetitive misconduct, your request for discharge to avoid trial for a lengthy period of UA, and your failure to complete the required period of alternate service you requested in order to receive a clemency discharge. Additionally, even if you had received clemency a discharge, you would not be eligible for veterans' benefits. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. 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