



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

ELP
Docket No. 1211-01
27 July 2001



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 Navy Records, sitting in executive session, considered your application on 25 July 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to obtain your military records and based its review on the records you provided. Those records reflect that you enlisted in the Marine Corps on 27 January 1967 for four years at age 19. Subsequently, you were advanced to PFC.

On 20 November 1967 you requested a hardship discharge because your family was in a serious state of poverty. The commanding officer's recommendation for approval was not supported by the chain of command and your request was denied by the Commandant of the Marine Corps.

You then served without incident until 8 December 1967 when you received nonjudicial punishment for consuming alcoholic beverages in a duty status and threatening to inflict bodily harm with a knife. However, you continued to serve and were advanced to LCPL (E-3).

You reported to duty in Vietnam on 5 October 1968. While in Vietnam, you received two nonjudicial punishments (NJP) and were convicted by two summary courts-martial. Your offenses consisted of assault with a bayonet, two brief periods of unauthorized absence, disobedience, disrespect, and being incapacitated for duty. You completed your tour in Vietnam on 5 October 1969.

On 10 August 1970 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for a six day period of UA and failure to obey a lawful regulation by having six cans of beer in a wall locker where protective clothing was stored. 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. The staff judge advocate reviewed your request and found it to be sufficient in law and fact. On 28 August 1970 the discharge authority directed an undesirable discharge for the good of the service. You were so discharged on 15 September 1970.

The record further reflects that on 20 June 1977 the Naval Discharge Review Board (NDRB) upgraded your discharge to a general discharge under the Department of Defense Special Discharge Review Program (SDRP). However, discharges under the SDRP met adverse congressional reaction and led to the enactment of Public Law 95-126, which precluded veterans benefits for any individual whose discharge was upgraded under such a program with automatic upgrading criteria.

On 3 April 1978, the NDRB again reviewed your case as required by Public Law 95-126, and issued a decisional document concerning that review. However, since this document did not state any reason for the decision, the Naval Complaints Review Board directed that the decisional document be amended. On 30 October 1979, the NDRB re-reviewed your case yet again to determine whether you should be awarded an upgraded discharge under published uniform standards which were historically consistent with the criteria for performing honorable service. Although the original undesirable discharge had been upgraded to a general discharge under the SDRP, the NDRB concluded that the offenses for which you requested discharge, when viewed with your overall record of service, warranted a characterization of having served under other than honorable conditions. Accordingly, the NDRB determined that the general discharge you received under the SDRP should not be changed. Therefore, you kept this upgraded discharge, but were ineligible for veterans benefits.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity,

Vietnam service, your wife's letter, the other letters of reference, the letters to the editor expressing your political views, the family documents, and the fact that it has been nearly 31 years since you were discharged. The Board also noted your statement explaining the circumstances surrounding your disciplinary actions, and your contentions to the effect that the NJPs and courts-martial were for minor isolated offenses in which racial discrimination was a primary contributing factor; alcohol and marital problems impaired your ability to serve; and you were within four months of completing your enlistment when you were discharged.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs and two summary courts-martial convictions, and the fact that you accepted discharge rather than face trial by court-martial. The Board believed that considerable clemency was extended to you when the 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. The Board concurred with the NDRB's conclusions that your overall record of service does not warrant recharacterization to honorable or under honorable conditions. Additionally, a report from the Federal Bureau of Investigation obtained by the Board show that after discharge you were convicted of robbery, burglary, and driving while intoxicated. The Board thus concluded that the general discharge you received under the SDRP was appropriate and no further change is warranted.

At the time of your service, reenlistment codes were not assigned. However, when your discharge was upgraded and a new DD Form 214 was issued, regulations then required the assignment of an RE-4 reenlistment code to individuals discharged for the good of the service.

There are no provisions for the return of an individual's uniform once a discharge has been upgraded to honorable conditions.

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