



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 1849-00

29 August 2000

MR [REDACTED]

Dear Mr. [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 22 August 2000. 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 21 January 1970 at the age of 17. Your record reflects that you served for a year and seven months without incident but on 26 August 1971 you received nonjudicial punishment (NJP) for failure to obey a lawful order and were awarded reduction to paygrade E-1. On 8 November 1971 you were recommended for a general discharge by reason of unsuitability due to your defective attitude. However, it appears that this recommendation was disapproved. Approximately a month later, on 20 December 1971, you were convicted by summary court-martial (SPCM) of a one day period of unauthorized absence (UA) and disobedience and were sentenced to reduction to paygrade E-1, forfeitures totalling \$150, and restriction for 30 days.

Your record further reflects that during the period from 12 January to September 1972 you received NJP on two occasions and were convicted twice by SCM. Your offenses were breaking restriction, absence from your appointed place of duty, failure

to have a valid identification card in your possession, six incidents of failure to go to your appointed place of duty, disobedience, sleeping on post, and leaving your post without being properly relieved.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). Your commanding officer recommended you be issued an other than honorable discharge by reason of misconduct.

On 28 November 1972 you received NJP on two occasions for two incidents of disrespect and disobedience. On 8 December 1972 you received your sixth NJP for failure to go to your appointed place of duty and were awarded a \$72 forfeiture of pay and extra duty for a week. Subsequently, on 21 December 1972, an ADB recommended you be issued an other than honorable discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities as evidenced by six NJPs and three court-martial convictions.

Your record contains an unit punishment book entry dated 26 January 1973 in which you were charged with two specifications of sodomy and communicating threat. However, the record does not indicate that any disciplinary action was taken for these offenses.

Subsequently, the discharge authority approved the recommendation for an other than honorable discharge and on 31 January 1973 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you believed your discharge would be automatically upgraded six months after your separation. The Board further considered your contention that you would like your discharge upgraded so that you may obtain medical benefits. However, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent misconduct, which resulted in six NJPs and three court-martial convictions. Further, no discharge is upgraded merely because of the passage of time. 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