



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

ELP
Docket No. 2540-00
31 August 2000

[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 30 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps for six years on 23 January 1969 as a SGT (E-5). At the time of your reenlistment, you had completed more than three years of prior honorable service and had served in Vietnam from January 1967 to September 1968.

The record reflects that you served without incident until 24 July 1969 when you were convicted by special court-martial of a 91-day period of unauthorized absence (UA). You were sentenced to confinement at hard labor for three months, reduction in rank to PVT (E-1), and forfeitures of \$100 per month for three months. On 15 August 1969 the convening authority suspended the confinement and forfeitures in excess of one month and the reduction below pay grade E-3.

On 30 October 1969 you received nonjudicial punishment for

failure to go to your appointed place of duty. However, the punishment awarded is not shown in the record.

In January 1970 you began a series of UAs from 24 January to 2 February, 2 February to 13 March, and 23 to 25 March 1970. On 26 March 1970 the convening authority vacated that portion of the court-martial sentence that was suspended on 15 August 1969 and ordered it executed.

On 4 May 1970 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing three periods of UA totalling about 51 days. 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. A staff judge advocate reviewed your request and found it to be sufficient in law and fact. On 26 May 1970 the discharge authority directed an undesirable discharge for the good of the service. You were so discharged on 4 June 1970.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service, Vietnam service, letter in support of your application, and the fact that it has been more than 30 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of an NJP, a special court-martial conviction, and the fact that you accepted discharge rather than face trial by court-martial for three periods of UA. The Board noted you received extraordinary consideration when the special court-martial did not award you a punitive discharge and the convening authority further mitigated the sentence. The Board believed that considerable clemency was also 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. Since there is no basis for changing your discharge, there is likewise no basis for changing your reenlistment and separation codes. 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