



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

ELP
Docket No. 3787-01
5 October 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 Navy Records, sitting in executive session, considered your application on 3 October 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.

You enlisted in the Marine Corps on 22 September 1967 for four years at age 17. The record reflects that you were advanced to PFC (E-3) and assigned to duty in Vietnam on 11 May 1968. During the five month period from October 1968 to March 1969, you received three nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of two instances of violating a general order by being in an off-limits area, sleeping while posted as a sentinel, leaving your post without being properly relieved, and failure to go to your appointed place of duty.

On 18 June 1969 you were convicted by special court-martial of wrongful appropriation of a jeep and possession of marijuana. You were sentenced to confinement at hard labor for five months, forfeitures of \$73 per month for five months, and a bad conduct discharge. You had a pre-trial agreement for suspension of all confinement at hard labor and a bad conduct discharge, if adjudged. On the same day, the convening authority approved only

so much of sentence that provided for confinement at hard labor and forfeitures for five months. The confinement was suspended for a period of six months. You departed Vietnam on 21 June 1969. However, on 23 June 1969, the suspension of that part of the sentence pertaining to confinement was vacated and ordered executed. The facts and circumstances of this vacation are not shown in available records.

You were reported as an unauthorized absentee (UA) on 11 November 1969 and remained absent until you were apprehended by civil authorities on 12 December 1969. On 29 January 1970 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the 31 day 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. On 18 February 1970 a staff judge advocate reviewed the request and found it to be sufficient in law and fact. He noted in his review your prior disciplinary history of three NJPs, convictions by a summary court-martial and a special court-martial, and that you had participated in 11 combat actions while in Vietnam. Thereafter, the discharge authority approved the request and directed an undesirable discharge and you were so discharged on 26 February 1970.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, Vietnam service, and the fact that it has been more than 31 years since you were discharged. Your contention to the effect that you signed papers for discharge without benefit of legal counsel is not supported by the evidence of record. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your record of three NJPs, convictions by a summary and a special court-martial, and the fact that you accepted discharge rather than face trial by court-martial for a 31-day period of UA. The Board noted that you failed to learn from your prior disciplinary experiences. Therefore, 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