



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

TJR
Docket No: 3978-01
23 November 2001

[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 14 November 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 17 June 1977 at the age of 17. Your record reflects that you served for nearly a year without disciplinary incident but on 20 April 1978 you received nonjudicial punishment (NJP) for two periods of absence from your appointed place of duty. The punishment imposed was a \$468 forfeiture of pay and restriction for 30 days. On 16 August 1978 you received NJP for absence from your appointed place of duty, three specifications of disobedience, disorderly conduct, and assault. The punishment imposed was restriction for 30 days, a \$450 forfeiture of pay, and a suspended reduction to paygrade E-1.

Your record further reflects that during the period from 5 September to 25 December 1978 you were absent from your appointed place of duty on five occasions, an unauthorized absentee on seven occasions for 17 days, failed to go to your appointed place

of duty, disobeyed orders on seven occasions, committed five assaults, resisted arrest, destroyed government property, used provoking language, committed disorderly conduct, and broke restriction on two occasions.

On 12 February 1979 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing offenses. Your record shows that 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. Subsequently, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of 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 13 April 1979 you were issued an other than honorable discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and your contention that your discharge resulted from your substance abuse problem for which you did not receive proper treatment. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your repetitive misconduct, and your request for discharge to avoid trial for these offenses. 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. Also, the Board noted that there is no evidence in your record, and you submitted none, to support your contention. 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