



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

TRG
Docket No: 5591-00
28 June 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the 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 26 June 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 record shows that you were released from active duty in the Army on 16 June 1986 with your service characterized as honorable. On 20 June 1986 you enlisted in the Marine Corps. A general court-martial convened on 1 April 1992 and convicted you of disrespect, four instances of making false official statements, two instances of making false claims against the government, and wrongfully wearing awards and insignia to which you were not entitled. The court sentenced you to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement at hard labor for 15 months and a dishonorable discharge. Portions of the confinement and forfeitures were suspended for 12 months.

After your release from confinement, you began appellate leave and remained in that status until the dishonorable discharge was issued. The record shows that on 6 March 1995 the U. S. Navy-Marine Corps Court of Criminal Appeals reviewed the proceedings and set aside the finding of guilty to the charge of disrespect but affirmed the remaining findings. A majority of the court concluded that the sentence was appropriate for the remaining charges and specifications. However, one judge dissented, concluding that a bad conduct discharge would be more

appropriate.

Subsequently, the Court of Appeals for the Armed Forces set aside the Court of Criminal Appeals decision and remanded the case for further review of new issues raised in your case. On 11 March 1996, the Court of Criminal Appeals again set aside your conviction of disrespect, affirmed the remaining findings and once again found, on a split vote, that the sentence was appropriate for the remaining offenses. The dishonorable discharge was issued on 6 February 1997.

In your application, you contend that you were improperly convicted by the general court-martial. You assert, in effect, that if your Army record had not been lost you could establish your entitlement to the awards and devices and could confirm the medical problems you were accused of lying about during the physical evaluation board hearing. You state that you are currently a doctoral candidate in history and have submitted a lengthy listing of your academic and publishing accomplishments.

The Board is prevented by law from reviewing the findings of courts-martial and must limit its review to determining if the sentence should be reduced as a matter of clemency. However, the Board noted that you pled guilty to the offenses of which you were convicted and the conviction was affirmed on two successive reviews by the Navy-Marine Corps Court of Criminal Appeals.

The Board carefully weighed all potentially mitigating factors, such as your prior honorable service in the Army and your claim of a successful post service adjustment, against the charges of which you were convicted. The Board found that the mitigating factors were not sufficient to warrant recharacterization of your discharge given the nature of the charges of which you were convicted.

The Board noted the opinion of the appellate military judge to the effect that the dishonorable discharge should be changed to a bad conduct discharge. However, the Board concluded that the dishonorable discharge was appropriate. Along these lines, the Board noted that a bad conduct discharge would still be very stigmatizing and would not afford you any greater benefits than the dishonorable discharge now of record.

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