



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 2037C-5100

ELP
Docket No. 6404-00
11 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, United States Code, Section 1552.

A three-member panel for the Board for Correction of Navy Records, sitting in executive session, considered your application on 6 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, 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 was unable to obtain your service record and based its review on the Naval Discharge Review Board (NDRB) case summary you provided.

The Board found you enlisted in the Marine Corps on 28 May 1971 for four years at age 17. The record reflects that on 3 August 1971 you were advised that you were being considered for an administrative discharge due to your failure to disclose a pre-service police record. However, the commanding officer believed you had potential to serve and recommended waiver of your concealment of a police record as a basis for a fraudulent enlistment.

You then completed recruit training and served without further incident until 16 August 1972, when you began a 174 day period of unauthorized absence (UA). Your medical record reflects

that on 17 April 1973 while awaiting trial by court-martial, you were referred for a psychiatric evaluation. The consultation report noted that you went UA due to rather vaguely described pressures that were building up, and feelings of being made to do useless and senseless things. You claimed one of the reasons for going UA was to help your ill mother in California and a younger brother who had been detained for drugs. However, when you went UA, you immediately hitchhiked to Boston because you were afraid you would be caught in California. You sent for your ill mother and brother but their situations would not allow for it because your mother had been hospitalized again for alcoholism.

On 30 April 1973 you were convicted by special court-martial of UA from 16 August 1972 to 11 February 1973. You were sentenced to confinement at hard labor for three months, forfeitures of \$50 per month for three months, reduction in rank to PVT (E-1), and a bad conduct discharge.

Records available to the NDRB indicated that on 29 May 1973 you submitted a request for a hardship discharge. However, on that date you were again reported UA. As a result of your being UA, all processing on your hardship discharge was terminated since it could not be continued until you returned to military control and all disciplinary action had been completed. You remained absent until surrendering to civil authorities on 10 July 1974. The bad conduct discharge was ordered executed on 23 July 1974 and you were so discharged on 26 July 1974.

On 28 June 1977 your bad conduct discharge was changed to a clemency discharge pursuant to Presidential Proclamation 4313 of 16 September 1974.

Under the Ford Clemency Program, individuals with bad conduct discharges who applied to the Presidential Clemency Board were either given a clemency discharge and a pardon or had to perform alternate service in order to receive such a discharge. Neither the Department of Veterans Administrative nor the Department of Defense considers the recipient of a clemency discharge to be entitled to any benefits that were denied by reason of the original discharge. The clemency discharge was somewhat less stigmatizing, and no benefits resulted from its issuance. The presidential pardon that accompanied the clemency discharge had the effect of restoring those civil rights that were denied as a result of a court-martial conviction.

In 1977, the Department of Defense announced the establishment of the Special Discharge Review Program (SDRP). This program permitted Vietnam-era recipients with general and undesirable discharges to apply to the appropriate discharge review board for

an upgrade of their discharges. While this program was broader than the Clemency Program because it was not limited to discharges resulting from absence-related offenses, it was narrower because bad conduct and dishonorable discharges were not included. Your discharge was reviewed under the SDRP on 15 September 1977 and it was determined that you were ineligible for upgrade because the discharge resulted from a court-martial conviction.

With the enactment of Public Law 96-126, veterans benefits were not permitted unless an upgrade was granted by a discharge review board, on a case-by-case basis, using uniform standards which were historically consistent with the criteria for determining characterization of service. On 11 August 1981 the NDRB reviewed your discharge under uniform standards and found no basis for recharacterizing your service.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, good post-service conduct, continuing education in college, training certificates, and the fact that it has been more than 26 years since you were discharged. The Board noted your contentions to the effect that the NDRB focused exclusively on the two offenses of UA for which you were pardoned by President Ford, that the NDRB ignored your prior satisfactory service and your request for a hardship discharge, and that you had no criminal record since discharge. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your special court-martial conviction of a prolonged period of UA totalling nearly six months; and the subsequent UA while awaiting appellate review, that exceeded more than a year. The Board noted the aggravating factor that after you were awarded a bad conduct discharge you forfeited your right to request restoration to duty, or the remote possibility of having a hardship discharge approved, by going UA again. Further, you have provided no evidence of any circumstance that would justify these two prolonged periods of UA. The Board believed to upgrade your discharge would be an injustice to those who served without any misconduct. Your discharge was effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service.

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