



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

TJR
Docket No: 909-02
18 July 2002



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 16 July 2002. 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.

You enlisted in the Marine Corps on 8 August 1974 at the age of 18. On 2 April 1976 you were convicted by special court-martial (SPCM) of a 104 day period of unauthorized absence (UA) and were sentenced to reduction to paygrade E-2, confinement at hard labor for 75 days, and a \$750 forfeiture of pay. The forfeitures and confinement were suspended for six months.

During the period from 19 to 25 May 1976 you were UA for a total of five days. Shortly thereafter, on 1 June 1976 you began a 120 day period of UA that was not terminated until you were apprehended on 29 September 1976. On 28 October 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the two periods of UA totalling about 125 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. Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an undesirable discharge. 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 16 November 1976 you were issued an undesirable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, post service conduct, and character reference letters. It also considered your contentions that your ability to serve was impaired due to your personal problems, and you should not have to continue to suffer from the adverse affects of an undesirable discharge. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of your repetitive and lengthy periods of UA, which also resulted in your request for discharge to avoid trial. 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. 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