



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

WMP

Docket No: 3580-02

10 October 2002



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 9 October 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 3 April 1975 for four years at age 17. Your record reflects that you served without incident until you were an unauthorized absentee from 17 to 21 November 1975, a period of four days. On 26 November 1975, you were counseled concerning your unsatisfactory conduct and performance of duty, and warned that if you did not improve you could be administratively discharged from the Marine Corps.

Your record further reflects you were an unauthorized absentee from 9 December 1975 to 19 January 1976, a period of 41 days.

On 11 February 1976 you submitted a request for an undesirable discharge in lieu of trial by court-martial for failure to go to your appointed place of duty and the two foregoing instances of

unauthorized absence, totaling 45 days. Prior to submitting this request you conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 16 February 1976 your request for discharge was approved by the discharge authority. As a result of such action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the undesirable discharge on 3 March 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that you were not fully advised of the documents that you were signing. However, your record shows that you were provided counsel and advised of the consequences of your request for discharge, and you did not desire to provide a statement to the discharge authority concerning the actions that resulted in your request. Furthermore, the Board found that your misconduct, which included two periods of unauthorized absence totaling 45 days, clearly warranted an undesirable discharge. 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