



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

ELP
Docket No. 6282-00
23 February 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 22 February 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 Board found that you enlisted in the Marine Corps on 3 May 1960 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served without incident until 7 November 1960, when you receive nonjudicial punishment (NJP) for absence from your appointed place of duty. On 17 November 1961 you were convicted by special court-martial of stealing a coat and a pair of trousers belonging to a LCPL (E-3). You were sentenced to confinement at hard labor for two months and a reduction in rank to PVT (E-1). The supervisory authority later reduced the confinement to one month.

On 11 December 1961 you were diagnosed with an emotional instability reaction with compulsive features. Thereafter, you were notified that your discharge was being recommended by reason of unsuitability due to a character and behavior disorder. You declined to submit a statement in your own behalf. On 8 January 1961 the discharge authority recommended separation with a

general discharge by reason of unsuitability. You were so discharged on 2 March 1962. At the time of discharge, your final averages in conduct and proficiency were 3.7 and 3.5, respectively.

The record further reflects that you reenlisted in the Marine Corps on 2 February 1965 and served in Vietnam from 7 July 1965 to 30 March 1966. You were twice wounded in combat and awarded the Purple Heart Medal. You were honorably discharged on 10 April 1967. You continued to serve in the Marine Corps and Marine Corps Reserve from May 1967 to September 1992 when you were transferred to the Retired Reserve. During this period you were recalled to active duty from 17 August 1990 to 15 May 1991 during operations Desert Shield and Desert Storm.

Individuals discharged for unsuitability received the type of discharge warranted by the service record. Character of service was based, in part, on conduct and proficiency averages which are computed from marks assigned during periodic evaluations. A minimum average mark of 4.0 was required in conduct for a fully honorable characterization at the time of your discharge in March 1962.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, subsequent honorable service in Vietnam in which you were twice wounded in combat, and your subsequent service in the Marine Corps and Marine Corps Reserve. The Board also noted your request for removal of the 1961 special court-martial conviction. However, the Board has no authority to remove a special court-martial conviction which has been finally and conclusively adjudicated in the court-martial appellate process. Although you overcame the misconduct in your earlier enlistment by your subsequent service, the Board concluded that this was insufficient to warrant recharacterization of your first period of service given your record of an NJP, a special court-martial conviction, and the fact that you failed to achieve the required average in conduct. The Board thus concluded that the discharge was proper and no change is warranted. 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