



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

TRG
Docket No: 7027-00
18 April 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 17 April 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 2 August 1976 at age 19. On 31 August 1976 you received nonjudicial punishment for disrespect. On 20 March 1977 you began a period of unauthorized absence which lasted until you surrendered on 13 April 1977. The next day you began another period of unauthorized absence and remained absent until you surrendered On 23 January 1978.

Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the two foregoing periods of unauthorized absence totaling about 308 days. Your record also shows that 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. The Board found that your request was granted on 2 May 1978 and, 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. You were discharged on 12 May 1978.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education and low score on the aptitude test. The Board noted your contention that you only enlisted in the Marine Corps because the judge gave you the option of enlisting or jail. You also claim that alcohol abuse led to your misconduct. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. There is no evidence in the record, and you have submitted none, showing that alcohol abuse was a factor in your case. The Board is also aware that regulations state that alcohol abuse is not an excuse for misconduct and disciplinary action is appropriate following alcohol related misconduct. 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 when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued 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