



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

CRS
Docket No: 8775-01
18 July 2002

[REDACTED]

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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 17 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 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 5 April 1993. The record reflects that on 30 April 1996 you were convicted by civil authorities of use of tear gas and vandalism. The court sentenced you to confinement for nine months.

On 2 August 1996 the commanding officer recommended that you be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense. When informed of the recommendation, you elected to waive the right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and you were discharged on 2 August 2001 with an other than honorable discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that the civil conviction has been dismissed and cleared. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your

discharge, given the seriousness of the offenses. In this regard, the Board noted that the State of California has set aside your conviction based on your compliance with the terms of your probation. However, this action does not alter the fact that that you were properly convicted at the time and discharged based on that conviction. Therefore, the Board concluded that no charge to the discharge 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