



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

TJR
Docket No: 10961-02
15 October 2003

[REDACTED]

[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 of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 October 2003. 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 12 May 1978 after two years of prior honorable service in the Army. You continued to serve without disciplinary incident until 17 October 1979 when you received nonjudicial punishment (NJP) for absence from your appointed place of duty. The punishment imposed was restriction and extra duty for seven days and a \$100 forfeiture of pay, half of which was suspended for two months.

During the period from 19 June to 15 October 1981 you received NJP on three occasions for three periods of unauthorized absence (UA) totalling 11 days and wrongful appropriation of an automobile valued at approximately \$5,200.

On 13 January 1982 you received your fifth NJP for a five day period of UA. The punishment imposed was reduction to paygrade E-1, restriction and extra duty for 45 days, and a \$250 forfeiture of pay, a portion of which was suspended for six months.

On 6 March 1982 you began a period of UA that was not terminated until you were apprehended by civil authorities on 30 April 1982. On 8 July 1982 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA totalling 56 days. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 27 July 1982 your request for discharge was granted and on 13 August 1982 you received an other than honorable discharge in lieu of trial by court-martial. 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.

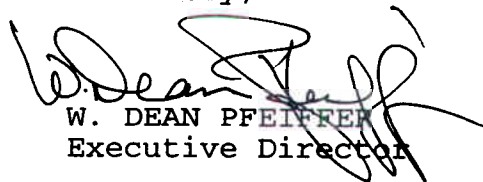
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your assertion that your misconduct was the result of being in a unit of mostly officers who consumed alcohol on a daily basis. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge because of your frequent misconduct, which resulted in five NJPs and your lengthy period of UA which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Further, the Board noted that there is no evidence in the record, and you submitted none, to support your contention. 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