



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

JRE
Docket No. 01702-03
20 October 2003

[REDACTED]

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

The Board found that you served on active duty in the Marine Corps from 29 May 1969 to 21 May 1970, when you discharged by reason of unsuitability, with a general discharge.

The Board rejected the majority of your contentions concerning inaccuracies in the narrative summary of your hospitalization during the 28-31 October 1969 period, as they are belied by information in a letter you wrote to former Senator Joseph M. Montoya on or about 9 February 1970, in which you enclosed a copy of the narrative summary. You essentially endorsed the contents of the narrative summary, and complained that you were getting the "run around" with regard to the investigation into

your admission of drug abuse, as well as with the initiation of discharge processing. You stated you feared that "complete insanity" would ensue unless your situation were remedied in the near future, i.e., that you were expeditiously discharged from the Marine Corps. There is no indication in the available records that you were psychotic when you wrote the senator, or that any one forced you to write him.

The Board rejected your contention to the effect that your discharge by reason of unsuitability was improper because an investigation into your admission of drug abuse had not been completed. The Board noted that there is a copy of an electronic message in your service record, dated 27 March 1970, which indicates the investigation into your use of narcotics had been completed.

The Board concluded that your recitation of your pre-service criminal history is incomplete, and false. It noted that in addition to an arrest for tampering with, and larceny from, a motor vehicle, you were made a ward of the court on 23 May 1965 in Santa Fe, New Mexico, and placed on probation until 7 July 1967, for the offense of "entering without breaking". The FBI "rap sheet" you submitted in support of your application is somewhat misleading, in that it does not reflect your complete juvenile record, or your post-service confinement in the Federal penal system for an extended period of time.

The Board rejected your contention that information you provided military officials concerning your medical history and pre-service drug use is invalid. 10 USC 1219 provides that a service member may not be required to sign a statement concerning the origin, incurrence or aggravation of a disease or injury that he has, and that any such statement against his interests, signed by a member, is invalid. The Board could not find any indication in your record that you were required to make or sign such a statement. It also found that you voluntarily disclosed pertinent aspects of your drug abuse and medical history to a former senator in order to expedite your discharge processing.

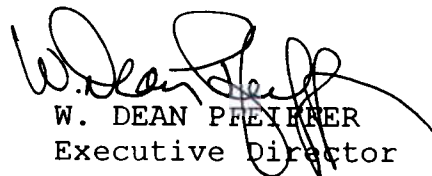
The Board rejected your contention that you were improperly denied knee surgery that had been scheduled prior to your discharge. The limited records available to the Board, which are copies of records in the possession of the Department of Veterans Affairs, indicate that on 31 March 1970, a physician reported that you had been placed on a quadriceps rehabilitation program, your attendance in the program had been poor, and your

recommended that you undergo an arthrotomy, to be followed by further quadriceps rehabilitation. There is no indication in available records that the recommendation was approved, and/or that you consented to undergoing surgery. Your failure to report any symptoms of knee disability when you underwent a pre-separation physical examination on 19 May 1970, may indicate that your knee condition was no longer symptomatic, you had recovered, or that you concealed any symptoms you were suffering at that time in order to expedite your separation. It did not appear to the Board that you were in need of emergent medical care on the date of your discharge, or that there was any basis for retaining you on active duty for the purpose of according you further medical care. The Board also rejected the conclusions of Dr. Maron concerning the alleged "catastrophic" nature of the knee injury you sustained in 1969, as well as his conclusion that you were disabled at the time of your discharge from the Marine Corps. The Board concluded that his opinion is unsubstantiated, and that his conclusions are suspect, because they were based, in large part, on information related by you. The Board does not consider you to be a reliable historian.

As you have not demonstrated that you were unfit for duty by reason of physical disability at the time of your discharge, or that it was erroneous or unjust in any other respect, the Board was unable to recommend any corrective action in your case. 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