



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

FC

Docket No: 06277-03

8 September 2003

[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 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 4 September 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 enlisted in the Marine Corps on 3 April 1967 at age 17.

On 19 August 1967 you were convicted by special court martial (SPCM) of a 57-day period of unauthorized absence and missing movement. You were sentenced to confinement at hard labor for three months and forfeitures of pay. Portions of the sentence were suspended. You then served in Vietnam 13 January 1968 to 2 February 1969.

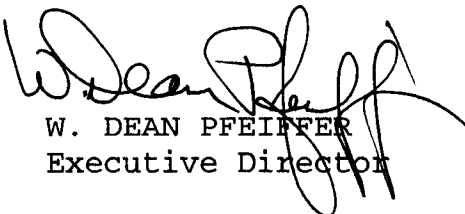
On 2 July 1969 you received nonjudicial punishment (NJP) for a brief period of unauthorized absence, and awarded a forfeiture of pay. On 17 December 1969 you were convicted by a summary court martial (SCM) of a 26-day period of unauthorized absence, and were sentenced to hard labor for thirty days and a forfeiture of pay.

On 2 February 1970 you requested a discharge under other than honorable conditions in order to avoid trial by court-martial for a 27-day period of unauthorized absence. Prior to submitting this request for discharge, 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. On 10 February 1970 the separation authority approved your request and your commanding officer was directed to issue you an undesirable discharge by reason of good of the service 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. On 13 February 1970 you received an undesirable discharge.

In its review of your case, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, the length of time that has passed since you were discharged from the Marine Corps, and your service in Vietnam. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge given your misconduct that resulted in a SPCM, a SCM, and an NJP, and especially your request for discharge to avoid trial by court martial for a 27-day period of unauthorized absence. The Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. 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