



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

TJR  
Docket No: 8417-06  
13 July 2007

[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 10 July 2007. 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 October 1987 at age 18 and served without disciplinary incident until 27 July 1988, when you were convicted by summary court-martial (SCM) of dereliction of duty, sleeping on post, and failure to go to your appointed place of duty. You were sentenced to reduction to paygrade E-1, confinement for 29 days, and a \$446 forfeiture of pay. About a month later, on 29 August 1988, you received nonjudicial punishment (NJP) for wrongful possession of a live round of ammunition. The punishment imposed was restriction and extra duty for 14 days and a \$140 forfeiture of pay.

On 12 December 1988 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for misconduct in a restricted area, specifically, wrongful entry, wrongfully consuming alcohol, making a false official statement by denying that you bought alcohol for and contributed

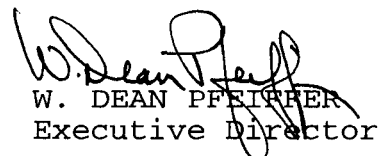
to the delinquency of minors, disorderly conduct, discreditable conduct, and providing alcohol to minors. Prior to submitting this request, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and on 9 March 1989 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, passage of time, post service conduct, and request to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which resulted NJP, a court-martial conviction, and 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. 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