



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

SMW

Docket No: 469-07

24 July 2007

Dear [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 24 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.

On 15 August 1994 you enlisted in the Marine Corps at age 18. During the period from 8 March 1995 to 19 November 1996 you received four nonjudicial punishments (NJP's). Your offenses included going outside of liberty limits, failure to obey a lawful order, disrespect, communicating a threat, and a brief period of unauthorized absence (UA). On 25 November 1996 you were counseled regarding deficiencies in your performance and conduct, and warned that further infractions could result in disciplinary action or administrative separation.

On 3 March 1997 you were charged with adultery. On 12 June 1997 you requested an other than honorable discharge for the good of the service to avoid trial by court-martial for this charge. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 3 July 1997 the separation authority approved your request for an other than honorable discharge. On 15 July 1997 you were separated with an other than honorable discharge for the good of the service to avoid trial by court-martial. As a result of this action, you

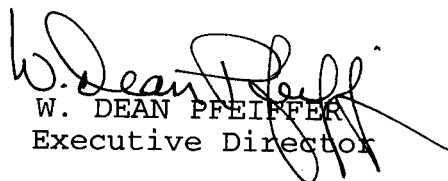
were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record, carefully considered all mitigating factors, such as your youth. The Board also considered your contention of innocence. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant changing the characterization of service, reason for discharge, or reenlistment code due to the seriousness of your misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Regarding your contention, there is no evidence in the record to support your contention of innocence, and you acknowledged that you were guilty of adultery when you requested the discharge. Finally, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you 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