



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

SMW

Docket No: 10150-07

26 June 2008

[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 25 June 2008. 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.

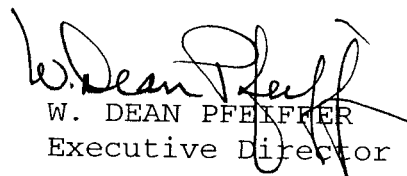
On 14 July 1972, you enlisted in the Marine Corps at age 17 with parental consent. On 5 November 1972, you began an unauthorized absence (UA) that ended on 18 February 1973, a period of about 105 days. On 1 March 1973, you were convicted by a summary court-martial of this offense. On 2 April 1973, you began a UA that ended on 14 August 1973, a period of about 134 days. On 5 October 1973, you requested an undesirable discharge (UD) for the good of the service to avoid trial by court-martial for the 134 day period of UA. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 23 October 1973, the separation authority approved your request for a UD. On 25 October 1973, you had nonjudicial punishment for disobedience of a lawful order. On 31 October 1973, you were separated with a UD 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 potential mitigation, such as your youth. The Board also considered your belief that your discharge would change after six months. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. You are advised that there is no provision in the law or regulations that allows for recharacterization after six months or due solely to the passage of time. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also 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