



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

TRG  
Docket No: 10938-07  
14 August 2008

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

You enlisted in the Marine Corps on 12 January 1966 at age 18. During the period from 1 July 1966 to 1 February 1967 you received a nonjudicial punishment and were convicted by two summary courts-martial. Your offenses were an unauthorized absence of about 14 days, disobedience, two instances of disrespect and disorderly conduct.

On 28 December 1967 you arrived in Vietnam. A general court-martial convened on 8 June 1968 and convicted you of assaulting a corporal, threatening an officer and two instances of being disrespectful to commissioned officers. The court sentenced you to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement at hard labor for nine months and a bad conduct discharge. Subsequently the bad conduct discharge was suspended for a probationary period of six months and on 7 November 1968 you were returned to duty. During the period from 26 November 1968 to 4 June 1969 you participated in support of 15 combat operations. You left Vietnam on 4 June 1969 and arrived in the United States on 12 June 1969.

On 7 July 1969 you began a period of unauthorized absence which lasted until you were apprehended on 10 September 1969, a period of about 65 days.


Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the 65 day period of unauthorized absence. Your record also shows that prior to submitting this request, 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. The Board found that your request was granted and, 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. You were discharged on 15 October 1969.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your youth, limited education and your contentions that your records, uniforms and other items were missing, and the command would not grant you the leave you believed you were entitled to. The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the 65 day period of unauthorized absence. 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. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

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