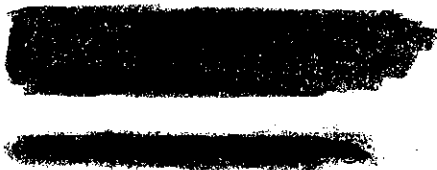




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 9542-08
26 August 2009



This is in reference to your application for correction of your late daughter's 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 25 August 2009. The names and votes of the members of the panel will be furnished upon request. 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 daughter's naval record, and applicable statutes, regulations, and policies.

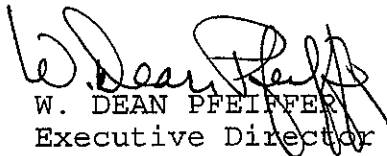
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 21 May 1969 at age 17. You served without disciplinary infraction until 29 October 1969, when you began a period of unauthorized absence (UA) that was not terminated until you were apprehended by civil authorities on 11 February 1970. During this period of UA you were also declared a deserter. On 20 March 1970 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA totalling 106 days. 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. Subsequently, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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 2 April 1970 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. It also considered your assertions of family, medical, and financial problems and that you were not given an opportunity to rebut your discharge. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your lengthy period of UA which resulted in your request for discharge to avoid trial by court-martial. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and as such, the discharge should not be changed. Further, there is no evidence in the record, and you submitted none, to support your assertions. Finally, the record has documented evidence that is contrary to your assertion that you were not provided an opportunity to rebut your discharge. Accordingly, your application has been denied.

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