



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

BAN
Docket No: 10821-08
30 September 2009

[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 16 September 2009. 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 11 April 1978, and served without disciplinary incident until 28 February 1979, when you received nonjudicial punishment (NJP) for failure to obey a lawful order.

Shortly thereafter, you received the following NJP's: on 12 March 1979, for destruction of government property, and on 31 March 1979, for disobeying a lawful order. In addition, you were pending court-martial charges for seven specifications of disrespect toward a noncommissioned officer, escape from lawful custody, and a general order violation. However, in May 1979, through counsel, you requested a separation in lieu of a trial by court martial. Your request was approved and on 1 June 1979, you were separated with an other than honorable discharge and an RE-4


reenlistment code. As a result of this action, you were spared the stigma of a court-martial conviction and the 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 and claim that you were addicted to drugs and did not receive any treatment from the military. Nevertheless, the Board concluded these factors were not sufficient to warrant a recharacterization to your discharge because of your misconduct. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for a discharge to avoid trial by court-martial 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