



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

TAL
Docket No: 7444-09
4 June 2010

[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 2 June 2010. 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 and began a period of active duty on 29 August 1972 at age 19. You received nonjudicial punishment on three occasions and were convicted by summary court-martial (SCM) for three instances of unauthorized absence (UA) from your unit for periods totaling 28 days and two instances of willfully disobeying a lawful order. After your SCM you were counseled regarding your misconduct and warned that further offenses could result in administrative separation. On 16 September 1975 you began a 67 day period of UA from your unit until you were apprehended on 18 November 1975 by civil authorities in Lexington, Kentucky. On 8 December 1975 you began a 35 day period of UA from your unit until you were again apprehended on 12 January 1976 by civil authorities in Lexington, Kentucky. On 12 March 1976, you were convicted in civil court of first degree attempted robbery and second degree assault in Fayette Circuit Court, Lexington, Kentucky. The sentence imposed was confinement in the state penitentiary for a maximum term of seven years at hard labor for each count to run consecutively. You were notified of pending administrative discharge processing with an other than honorable (OTH) discharge due to misconduct.

You waived all of your procedural rights, including your right to an administrative discharge board (ADB). On 10 August 1976, you received the OTH discharge for misconduct due civil conviction.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in a civil conviction, three NJPs, and a SCM. Finally, the Board noted that you waived the right to an ADB, your best opportunity for retention or a better characterization of service. 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