TJR
Docket No: 10640-09
12 August 2010

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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 10 August 2010. 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 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 14 February 1972 at age 19 and served for nearly a year without disciplinary incident. However, during the period from 4 January to 23 October 1973, you received nonjudicial punishment (NJP) on two occasions and were convicted by summary court-martial and special court-martial. Your offenses were four periods of unauthorized absence (UA) totalling 97 days.
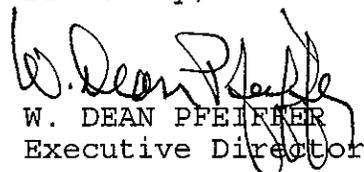
During the period from 11 April 1974 to 14 January 1975 you were in a UA status on six more occasions and declared a deserter. One of these occasions was not terminated until you were apprehended by civil authorities and subsequently returned to military authorities. On 10 February 1975 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA totalling 452 days. The record 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. On 24 February 1975 your request was granted and the commanding officer was directed to issue you an undesirable 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 26 March 1975 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, post service conduct, and desire to upgrade your discharge. The Board also considered your assertion of drug and alcohol abuse. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and lengthy periods of UA, which resulted in two NJPs, two courts-martial, and your request for discharge. 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 you should not be permitted to change it now. 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