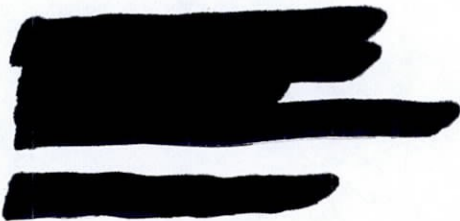




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 534-10
13 October 2010



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 6 October 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 30 July 1973 at age 26 and served without disciplinary infraction until January 1974. On 18 January 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for two specifications of communicating a threat to injure, assault, and two specifications of disobedience. 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 6 May 1974 your request was granted and your 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 15 May 1974 you were so discharged. However, in accordance with Public Law 95-126, the Navy Discharge Review Board (NDRB) determined that you qualified for an upgrade of your discharge under uniform standards and, as such, upgraded the your undesirable discharge to general under honorable conditions. At that time you were advised that you might be ineligible for veteran's benefits.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and desire to upgrade your general discharge. Nevertheless, the Board concluded the evidence and materials submitted were not sufficient to warrant any favorable action given the seriousness of your repetitive misconduct. The Board noted that your characterization of service was changed to general under honorable conditions, but concluded that a further change was not warranted. 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