



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

BAN  
Docket No: 000643-10  
25 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 21 October 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.

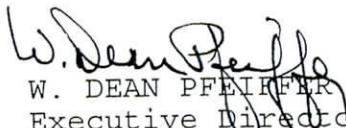
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 13 February 1969, and served without any disciplinary action until you were in an unauthorized absence (UA) status for 13 days. In addition on 22 September 1969, you received nonjudicial punishment (NJP) for grand larceny. On 29 October 1969, you received another NJP for UA in excess of 77 days. Finally, you were in a UA status from 12 November 1969 to 24 May 1979, and from 16 June to 1 September 1970. Therefore, you were pending a court-martial for UA. You requested through counsel, to be separated to escape trial by court-martial. On 5 October 1970, you were separated with an other than honorable discharge and an RE-4 reenlistment code, in lieu of trial by court-martial. 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.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and belief that enough time has elapsed to warrant upgrading your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. Further, there is no provision of law or in Navy regulations that allows for recharacterization of service due solely to the passage of time. Finally, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. It was clear to the Board 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. The names and votes of the members of the panel will be furnished upon request.

The Board also noted that you should contact Headquarters, United States Marine Corps, Deputy Chief of Staff for Manpower and Reserve Affairs (M&RA) Department, Separation Section (MMSR-3), 3280 Russell Road, Quantico, Virginia 22134-5103 to request that administrative corrections to your Social Security number and name change be made on your DD Form 214. I have enclosed your original birth certificate and Social Security card. 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

Enclosures