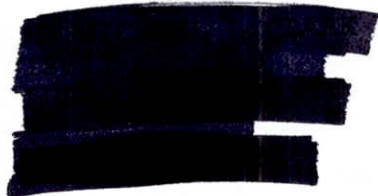




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

REC
Docket No: 08316-10
21 April 2011



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 20 April 2011. 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 25 June 1968. On 18 April 1969, you received nonjudicial punishment (NJP) for being absent from your appointed place of duty. On 8 December 1970, you received NJP for being in an unauthorized absence (UA) status, willfully disobeying a lawful order, disobeying a general order, wrongfully having possession with intent to deceive a pass authorizing you to be in an off limits area. On 18 December 1970, you were convicted by a summary court-martial (SCM) of two incidents of being absent from your appointed place of duty, and four incidents of breaking restriction. You were sentenced to forfeitures of \$50, reduction in pay grade, and 45 days restriction. On 19 May 1971, you received NJP for failure to go to your appointed place of duty. On 27 September 1971, you received NJP for wrongfully urinating out the rear hatch of a helicopter, wrongfully using reproachful language, and wrongfully communicating a threat to a fellow Marine. On 6 December 1971, you received NJP for being absent from your appointed place of duty, failure to maintain a clean rifle, and leaving your post to buy food, then returning to post while eating. On 16 December 1971, you received NJP for failure

to obey a lawful order. On 10 January 1972, you submitted a request for a good of the service discharge to avoid trial by court-martial for disobeying a lawful order, three incidents of failure to obey a lawful order, and possession of marijuana. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your commanding officer forwarded his recommendation that you be discharged under other than honorable (OTH) conditions by reason of convenience of the government. Your request for discharge was granted and on 31 January 1972, you received an OTH for the good of the service 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. At that time you were assigned an RE-4 reenlistment code.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, and Vietnam combat service, conduct and performance. Nevertheless, the Board found that these factors were not sufficient to warrant changing the reason or characterization of your discharge, given six NJP's, one conviction by SCM of misconduct, and your request. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and 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