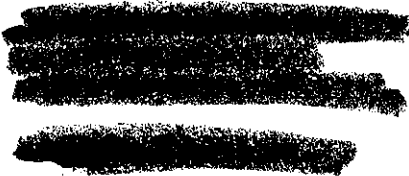




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 11790-10
16 September 2011



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 13 September 2011. 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.

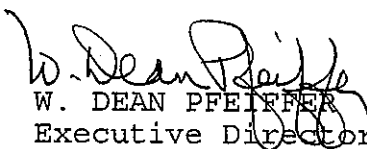
You enlisted in the Marine Corps on 18 December 1972 at age 17 and served for about a year and four months without disciplinary incident. However, on 23 April 1974, you received nonjudicial punishment (NJP) for two specifications of assault, resisting arrest, and wrongful possession of an illegal weapon. On 1 May 1974 you received NJP for absence from your appointed place of duty. About two months later, on 18 July 1974, you were convicted by special court-martial (SPCM) of two specifications of disobedience and assault. You were sentenced to confinement at hard labor for three months, a \$400 forfeiture of pay, and reduction to paygrade E-1. The confinement was suspended for six months. On 1 November 1974 you received your third NJP for disrespect. Shortly thereafter, on 23 December 1974, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for disrespect, disobedience, and assault. 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. Subsequently, your

request was granted and the commanding officer was directed to issue you an other than honorable 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 27 January 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 and desire to upgrade your discharge. It also considered your assertion of being encouraged to consume alcoholic beverages which you believe was the result of your misconduct. It further considered your character reference letters provided in support of your case. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in three NJPs, a SPCM, 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. Further, there is no evidence in the record, and you submitted none, to support your assertion. 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