



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

REC

Docket No: 02723-11

17 January 2012

[REDACTED]

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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 13 January 2012. 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.

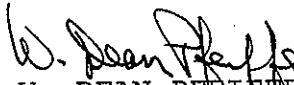
You enlisted in the Marine Corps on 7 February 1974, at the age of 18. On 20 May 1974, you received counseling concerning the various types of discharges. On 10 September 1974, you received nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status for seven days. On 25 November 1974, you received NJP for being UA for 58 days. On 21 January 1975, you received NJP for being UA for two days. On 2 June 1975, you were counseled and informed that any further misconduct would result in discharge proceedings. On 27 June 1975, you received NJP for being absent from your appointed place of duty. On 29 April 1975, you were convicted by a special court-martial (SPCM) of being UA on two occasions totaling 32 days. You were sentenced to forfeiture of \$200, and confinement at hard labor for two months. On 12 February 1976, you submitted a request for a good of the service discharge in order to avoid trial by court-martial for three incidents of failure to go to your appointed place of duty, being UA for 95 days, two incidents of

failure to obey a lawful order, and being disrespectful toward your senior noncommissioned officer. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were warned of the probable adverse consequences of accepting such a discharge and you acknowledged the purpose and scope of the Naval Discharge Review Board and the Board for Correction of Naval Records. Your request for discharge was granted and on 2 March 1976, you received an other than honorable discharge (OTH) for the good of service to avoid 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 application, carefully weighed all potentially mitigating factors, such as your youth, and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your misconduct, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved. 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. Further, you are advised that there is no provision in the law or Navy regulations that allows for automatic recharacterization of your discharge due solely to the passage of time. 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