



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

TJR
Docket No: 4126-11
25 April 2011

[REDACTED]

[REDACTED]

This is in reference to your applications 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, reconsidered your application on 19 April 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 applications, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies. In addition the Board considered the Naval Discharge Review Board (NDRB) decisional document (MD85-01018) resulting from your personal appearance before that Board on 20 November 1985.

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

Your record reflects that on 25 October 1973 you enlisted in the Marine Corps at the age of 17. At that time you stated that you had never been arrested, convicted of a crime, sentenced by a court, or received a suspended sentence. However, on 21 November 1973, an agency background check stated, in part, that your involvement with civil authorities included theft of an automobile, disturbing the peace, resisting arrest, and driving under the influence of alcohol.

On 25 February 1974 you were convicted by summary court-martial (SCM) of two periods of unauthorized absence (UA) totalling 64 days. About a year later, on 24 January 1975, you were convicted by special court-martial (SPCM) of a 138 day period of UA. On 3 May 1975 you began yet another period of UA that was not terminated until 12 May 1976. As a result, on 17 May 1976, you submitted a written request for an other than honorable discharge

in order to avoid trial by court-martial for the foregoing period of UA totalling 375 days. 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 19 May 1976 you were issued an other than honorable discharge.


In November 1985 the NDRB determined that you qualified for an upgrade of your undesirable discharge under uniform standards and, as such, upgraded the your discharge to general under honorable conditions. It appears that this decision was based, in part, on your "long pre-service history of alcoholism and alcohol related incidents" which were not likely known by your superiors and your "post-service academic endeavors and participation in alcohol rehabilitation." However, because of the seriousness of your record of misconduct, the narrative reason for separation was not changed.

The Board, in its review of your entire record and applications carefully weighed all potentially mitigating factors, such as your youth, desire to upgrade your general discharge, the NDRB decisional document, and letters of congressional interest in support of your applications. It also considered your evidence of mistaken identity, history of pre-service alcoholism, juvenile record, and assertions of not being afforded counselling, problems adjusting, receiving inadequate legal advice, family emergencies and death, health problems, and being diagnosed with post traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case. The Board noted that your characterization of service was changed to general under honorable conditions, but concluded that a further change was not warranted because of the seriousness of your repeated and lengthy periods of UA which resulted in conviction by a SPCM and a SCM, and your request for an undesirable discharge for a 375 day period of UA. The Board believed that considerable clemency was extended to you when your discharge was upgraded to general under honorable conditions, and concluded that you should not be permitted to change it now based on your assertions. Finally, the Board concluded that you were fortunate to have received a general discharge with having a record of 577 days of UA in less than a three year period. 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