



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

BAN
Docket No: 04540-11
21 February 2012

[REDACTED]

[REDACTED]

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 15 February 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 entered active duty service in the Marine Corps on 17 October 1988, and served without disciplinary incident until 7 June 1989, when you received nonjudicial punishment (NJP) for an unauthorized absence (UA), failure to obey a lawful order, and presenting a false "no duty" chit. Shortly thereafter, you received the following disciplinary actions: on 7 August 1989, you received NJP for UA and two specifications of failure to obey a lawful order; on 6 December 1989, you were convicted at a special court-martial (SPCM) of two specifications of failure to go to your appointed place of duty, and wrongful use of a controlled substance (methamphetamines and amphetamines); and on 6 April 1990, you received NJP for assault. Your record is incomplete, but you were pending additional charges and requested through counsel, to be separated to escape trial by court-martial. Therefore, on 5 July 1990, 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 claim that you were never convicted of a felony or at a court-martial. However, the Board concluded that in fact, you were convicted at a SPCM and found guilty of misconduct at three NJP's, and that your claim were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was approved 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.

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