



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

TAL
Docket No: 317-12
27 September 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 26 September 2012. 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 and began a period of active duty on 15 March 1973 at age 17. You received nonjudicial punishment (NJP) on two occasions for unauthorized absence (UA) from your unit for a two day period, failure to go to your appointed place of duty and insubordinate conduct toward a superior noncommissioned officer. On 24 September 1974 you were convicted by summary court-martial (SCM) of UA from your unit for a period of 111 days. During this period of UA you were arrested, tried and convicted in Winnebago County, Illinois, of unlawful intoxication, contributing to the delinquency of minor and unlawful possession of marijuana. On 5 October 1974, you were again in a UA status from your unit until you were apprehended by the Federal Bureau of Investigation (FBI) on 20 November 1975, a period of 411 days. During this period of UA

you were again arrested in Winnebago County, Illinois, and convicted of theft. You served your sentence of confinement and were returned to military control. On 18 December 1974, you made a written request for discharge for the good of service to avoid trial by court-martial for the foregoing period of UA. 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. Your request was granted and the commanding officer directed your other than honorable (OTH) discharge. 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 5 January 1976, you were discharged under OTH conditions.

The Board, in its review of your entire record and 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 given the seriousness of your misconduct that resulted in two NJPs, a SCM, two civil convictions, periods of UA totaling over one year and four months and 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 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