



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

TJR
Docket No: 4181-12
14 March 2013

[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 12 March 2013. 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 26 June 1969 at age 17. You served without disciplinary incident until 5 May 1971, when you received nonjudicial punishment (NJP) for a seven day period of unauthorized absence (UA). On 15 June 1971 you submitted a written request for a hardship discharge which was subsequently disapproved. On 21 July 1971 you received NJP for absence from your appointed place of duty and dereliction of duty.

During the period from 9 August to 24 October 1971 you were in a UA status on two occasions. As a result, you submitted a written request for separation in lieu of court-martial for the good of the service. On 16 November 1971 the discharge authority disapproved this request and the charges were referred for trial. On 22 November 1971 you were convicted by special court-martial (SPCM) of two periods of UA totalling 46 days. You were sentenced to confinement at hard labor for three months, reduction to paygrade E-1, and a bad conduct discharge (BCD).

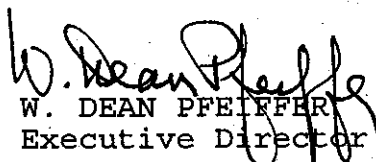
Your record reflects that on 9 December 1971 a letter was forwarded to your mother which stated in part, that normally a BCD would not have been awarded in your case, but you requested it because you felt it was in your best interest. Nonetheless, on 3 February 1972, you submitted a written request for clemency, specifically, restoration to duty. On 29 March 1972 this request was denied because of your disciplinary actions during your period of confinement. Subsequently, the BCD was approved at all levels of review and on 28 April 1972 you were so discharged.

Your record reflects that on 4 November 1975 you were granted a full pardon and your initial discharge was changed. In this regard, on 19 November 1975, you were awarded a clemency discharge pursuant to Presidential Proclamation 4313.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, and desire to upgrade your discharge for medical benefits. It also considered your assertion that your punishment did not fit the offenses (crime) for which you received the BCD. Nevertheless, these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct and lengthy period of UA from the Marine Corps which resulted in a SPCM. Further, the Board noted that your discharge was changed under the provisions of Presidential Proclamation 4313, but concluded that a further change, which would make you eligible for Department of Veterans Affairs (DVA) benefits, was not warranted. 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