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

TJR
Docket No: 7464-98
16 April 1999

[redacted]

Dear [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 13 April 1999. 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.

The Board found you enlisted in the Marine Corps on 2 December 1971 at the age of 17. Your record reflects that on 7 July 1972 you were convicted by summary court-martial (SCM) of a 28 day period of unauthorized absence (UA). You were sentenced to forfeitures totalling $148, confinement at hard labor for 29 days, and reduction to paygrade E-1. Shortly thereafter, on 20 July 1972, you received nonjudicial punishment (NJP) for drunk and disorderly conduct. The punishment imposed was a reprimand.

Your record further reflects that you were UA from 28 to 29 October 1972. On 30 October 1972 you received NJP for absence from your appointed place of duty. The punishment imposed was restriction for 60 days. On 9 December 1972 you began a 156 day period of UA that was not terminated until 14 May 1973. Shortly thereafter, on 25 May 1973, you began a 37 day period of UA that was not terminated until 1 July 1973. On 14 September 1973 you submitted a written request for an undesirable discharge in lieu of court-martial for the three foregoing periods of UA totalling 194 days. However, on 19 September 1973, the discharge authority

disapproved your request. On 28 September 1973 you were convicted by special court-martial (SPCM) of these three incidents of UA totalling 194 days. You were sentenced to confinement at hard labor for two months, forfeitures totalling $408, and a bad conduct discharge (BCD). On 24 October 1973 you submitted a written request for immediate execution of the BCD. Your request stated as follows:

> I can't adjust to the military way of life. My grandmother has got financial problems and I figure that I'm able to help her more in civilian life than in the Marine Corps. I feel that I should be given my BCD because I don't want to go back to duty.

After the findings and sentence were reviewed and approved, the BCD was ordered executed. Subsequently, on 27 February 1974, you received the BCD.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you would like your discharge upgraded to under honorable conditions. The Board further considered your contentions that you requested the BCD on the advice of legal counsel after being told that you could obtain veterans' benefits. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct, lengthy periods of UA from the Marine Corps, and especially your request for immediate execution of the BCD instead of restoration to duty. Further, the Board noted that that there is no evidence in your record, and you submitted none, to support your contention that legal counsel told you that you could obtain veterans' benefits after being discharged with a BCD. Given all the circumstances of your case, the Board concluded your discharge was proper and no change is warranted. 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