



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 9147-96

26 March 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 24 March 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. In addition, the Board also considered the advisory opinion furnished by the Orthopaedic Surgery Service, Madigan Army Medical Center, a copy of which is enclosed for your information.

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 20 November 1972 at the age of 18. Your record reflects that you served for a year and four months without incident but on 4 March 1974 you were convicted by summary court-martial (SCM) of two incidents of absence from your appointed place of duty and two incidents of failure to obey a lawful order. You were sentenced to reduction to paygrade E-1, forfeitures totalling \$216, and restriction for 45 days. On 13 August 1974 you received nonjudicial punishment (NJP) for altering a "no-duty" chit. The punishment imposed was restriction for 14 days. Shortly thereafter, on 5 September and again on 4 November 1974 received NJP on two more occasions for absence from your appointed place of duty and disobedience. On 29 January 1975 you received your fourth NJP for disobedience and communicating a threat. The punishment imposed was forfeitures totalling \$200 and extra duty for 30 days.

Subsequently, on 11 May 1976, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement of a discreditable nature with military or civilian authorities. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). On 18 May 1976, while awaiting the ADB, you received your fifth NJP for a one day period of unauthorized absence (UA). The punishment imposed was forfeitures totalling \$75. At this same time you were referred to special court-martial (SPCM) for four incidents of failure to obey a lawful order, five incidents of absence from your appointed place of duty, disrespect, and three incidents of disobedience. There is no indication in the record as to the final disposition of these charges.

On 10 June 1976 an ADB recommended you be issued an undesirable discharge by reason of misconduct due to frequent involvement of a discreditable nature with military or civilian authorities. On 2 July 1976 the discharge authority approved the foregoing recommendation and directed your commanding officer to issue you an undesirable discharge by reason misconduct due to frequent involvement of a discreditable nature with military or civilian authorities. On 8 July 1976, while awaiting separation, you were UA for one day. On 15 July 1976 you were issued an undesirable discharge by reason of misconduct.

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 would like your discharge upgraded to honorable so that you may receive medical/disability benefits now that you are receiving compensation/veterans' benefits for your service-connected back condition. The Board also considered your contentions that you were unjustly discharged and that your misconduct was due to a nervous condition and a severe back pain condition. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct, which resulted in five NJPs and a court-martial conviction. The Board substantially concurred with the comments contained in the advisory opinion. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Given all the circumstances in your case the Board concluded your discharge was proper as issued 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

Enclosure



DEPARTMENT OF THE ARMY
MADIGAN ARMY MEDICAL CENTER
TACOMA, WASHINGTON 98431-1100

REPLY TO
ATTENTION OF:

MCHJ-SOP

31 Jul 98

MEMORANDUM FROM Clayton E. Turner, LCDR, MC, USNR, Chief of Spine Surgery, Department of Orthopaedic Surgery, Madigan Army Medical Center

TO: Chairman, Board for Correction of Naval Records

SUBJECT: Former [REDACTED] 1

ENCL: (1) BCNR File
(2) Service Record
(VA) VA Records/Medical Record

1. A complete and thorough review of the enclosures regarding [REDACTED] was carried out. In review, this former PFC presented on numerous occasions with complaints of centralized low back pain without radiating pain to the lower extremities. In review of all entries into the medical record there are no objective findings to substantiate a back condition which would have impaired his ability to service satisfactorily. The documented physical examinations and supporting radiographic and laboratory studies do not substantiate a condition involving the lower back which would have significantly impaired his ability to perform his duties while serving in the United States Marine Corp.
2. An objective specialty review has been carried out and I can find no substantial documentation to support the existence of a back condition of such a nature that it would significantly impair his ability to serve satisfactorily.
3. If any additional information is necessary please do not hesitate to contact me within the Department of Orthopaedic Surgery at Madigan Army Medical Center, Fort Lewis, WA.

FREDERIC L. JOHNSTONE, MD
ATC, MC 153-50-6902
STAFF ORTHOPAEDIC SURGEON

CLAYTON E. TURNER, M.D.
LCDR, MC, USNR
Orthopaedic Surgery Service