



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3737-99

20 September 1999

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 15 September 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 7 June 1971 for three years at age 17. The record reflects that you were advanced to PFC (E-2) and served without incident until 1 January 1972 when you received nonjudicial punishment (NJP) for a nine day period of unauthorized absence (UA).

The record further reflects that in March 1972 you began a series of UAs from 30 March to 19 July 1972, 5-6 September 1972, and 4 October 1972 to 3 September 1973. The two prolonged periods of UA were terminated by your apprehension.

On 5 December 1973 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the three foregoing three periods of UA totalling about 453 days. 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. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. The discharge authority approved your request for discharge and directed separation with an undesirable discharge. You were so discharged on 28 December 1973.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been nearly 26 years since you were discharged. The Board specifically noted your mother's letter attesting to your contention that you went UA after her husband abandoned her with five young children to raise. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your record of an NJP and the fact that you requested discharge rather than face trial by court-martial for three periods of UA totalling more than 15 months. The Board is always sympathetic to individuals with family problems, however, the Board was not convinced that your mother's problems were so severe as to warrant absences of more than a year. The Board noted the aggravating factor that the two prolonged periods of UA were terminated only by your apprehension. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted 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