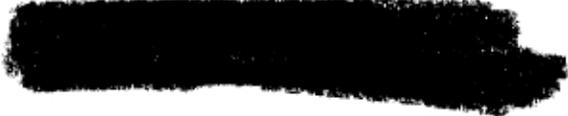




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 3148-99
13 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 9 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 16 November 1972 for four years at age 17. The record reflects that you served for more than 10 months without incident. However, during the 23 month period from September 1973 to August 1975 you received a nonjudicial punishment (NJP) and were convicted by a summary court-martial and a special court-martial. Your offenses consisted two periods of unauthorized absence (UA) totalling 107 days and disobedience of a lawful order.

The record further reflects that you were reported UA again on 3 September 1975 and remained absent until you were apprehended by civil authorities on 5 April 1977. Charges were referred to a special court-martial on 12 April 1977. However, on 22 April 1977 you received a NJP for a five and half hour period of UA.

On 6 May 1977 you submitted a request for an undesirable discharge under other than honorable conditions for the good of the service to escape trial by court-martial on the 551 day period of UA from September 1975 to April 1977. 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 the request and directed discharge. You were discharged under other than honorable conditions 15 July 1977.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that is has been more than 22 years since you were discharged. The Board noted your contentions that given your conduct and proficiency marks you should not have received a discharge under other than honorable conditions, and your UA was the result of marital problems. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP, convictions by summary and special courts-martial, and the fact that you accepted discharge rather than face trial by court-martial for more than 18 months of UA. The Board noted the aggravating factor that this prolonged period of UA was terminated only by your apprehension. Proficiency and conduct marks are not relevant in the characterization of service of individuals discharged for the good of the service. The Board believed that considerable clemency was extended 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 and you should not now be allowed to change it. 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