



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 4037-98

8 September 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 21 July 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 26 June 1969 at age 18. Your record reflects that you received two nonjudicial punishments and were convicted by a special court-martial. The offenses included unauthorized absences totalling 167 days, disobedience of a lawful order, and false official statement.

Your military record shows that on 24 January 1972 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for unauthorized absences totalling 152 days and willful disobedience of a lawful order. Your record also shows that 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. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an undesirable discharge on 18 February 1972.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, limited education, family problems, use of alcohol and drugs, and physical problems. The Board also considered your contentions that you tried to serve but could not, and the command abused its authority by not giving you a general discharge. However, the Board found that these factors were not sufficient to warrant recharacterization of your discharge, given the frequency of your offenses. In this regard, the Board noted that in a period of less than three years, you were the subject of three disciplinary actions and requested discharge in lieu of another court-martial. The Board also 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 when your request for discharge was granted and should not be permitted to change it now. Finally, there is no evidence in the record, and you have submitted none, to support your contentions. Based on the foregoing, the Board concluded that no change to the discharge 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