



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2936-99

31 August 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 27 August 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 13 April 1978 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served without incident for nearly seven months. However, during the 10 month period from November 1978 to September 1979 you received three nonjudicial punishments (NJP). Your offenses consisted of sleeping on post, failure to obey a lawful order, dereliction in the performance of your duties, and wrongfully giving another Marine your military identification card. The record also reflects two additional NJPs during the months of November and December 1979, but the facts and circumstances surrounding these two NJPs are not shown in the record. In both instances, you were awarded a forfeiture of \$110 and 14 days of restriction and extra duty. However, you were advanced to LCPL (E-3) on 1 July 1980.

On 19 November 1981, you were convicted by special court-martial of assault and disobedience of an order. You were sentenced to confinement at hard labor for three months, forfeitures of \$50 per month for three months, and reduction in rank to PFC. Incident to your discharge a page 11 entry in your record states:

"Assigned an RE-4 reenlistment code due to average conduct markings of 3.6..." You received a general discharge upon the expiration of your enlistment on 25 May 1982.

Individuals discharged by reason of expiration of enlistment receive the type of discharge warranted by their service records. Character of service is based, in part, on conduct and proficiency averages which are computed from marks assigned during periodic evaluations. The marks page on file in your record is incomplete in that it does not contain marks assigned as the result of your court-martial or upon discharge. Your conduct and proficiency averages through 31 July 1981 were 3.98 and 4.18 respectively. A minimum average mark of 4.0 was required in conduct for a fully honorable characterization at the time of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, good post service conduct, letters of reference, regret for your actions, and the fact that it has been more than 17 years since you were discharged. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your record of five NJPs, a special court-martial conviction, and apparent failure to achieve the required average in conduct. In this regard and in view of the page 11 entry made at the time of discharge, it appeared to the Board that you received additional marks which, for unknown reasons, were not entered on the marks page, and these marks reduced your conduct average to 3.6. Absent evidence to the contrary, the Board concluded that the 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