



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 2489-99

24 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 10 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 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 3 January 1972 at the age of 19. Your record shows that during the period from 23 August to 19 December 1972 you received nonjudicial punishment (NJP) on three occasions for a two day period of unauthorized absence (UA), breach of the peace, two incidents of disobedience, and resisting arrest.

Your record further reflects that during the period from 22 May 1973 to 10 June 1976 you were convicted by civil authorities on five separate occasions of three incidents of forgery, writing three worthless checks, and as an accessory to an automobile accident.

From 20 December 1972 to 12 July 1976 you were in an UA status on seven occasions for 1,006 days. On 4 August 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA. Your record 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. Subsequently, your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. 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. On 25 August 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded. The Board further considered your contention that you were told that your discharge would automatically be upgraded after a six month period. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent misconduct in both the military and civilian communities, the lengthy periods of UA, and especially your request for discharge to avoid trial for your repeated periods of UA. 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. Finally, no discharge is upgraded simply due to the passage of time. Given all the circumstances of 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