



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8609-98

30 April 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 28 April 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 April 1973 for four years at age 17. The record reflects that you served only five months without incident. During the five month period from September 1973 to February 1974 you received five nonjudicial punishments (NJP). Your offenses consisted of theft, two instances of absence from or failure to go to your appointed place of duty, insubordination, use of provoking speech and gestures, assault, a one day period of unauthorized absence, two instances of disobedience, and dereliction of duty.

On 4 April 1974, you submitted a request for a discharge under other than honorable conditions for the good of the service to escape trial by court-martial for two specifications of disobedience, disrespect, and four specifications of use of provoking words and gestures. Prior to submitting this request you conferred with a qualified lawyer, at which time you were

advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Thereafter, the discharge authority approved your request and directed discharge under other than honorable conditions. You were so discharged on 7 May 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, letter in support of your application, and the fact that it has been 26 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of five NJPS and the fact that you requested discharge rather than face trial by court-martial for multiple offenses. 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. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. The Board noted from the letter that your post-service conduct has been marred by a civil conviction, and you are presently incarcerated. 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