



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8438-98

12 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 7 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 31 March 1954 for three years at age 20. The record reflects that you were advanced to PFC (E-2) in January 1955 but were administratively reduced in rank due to incompetence on 28 November 1955. You served during the next two months without incident. However, during the 11 months period from January to November 1956 you received three nonjudicial punishments (NJP) and were convicted by a summary court-martial and a special court-martial. Your offenses consisted of two periods of unauthorized absence (UA) totalling about 28 days, two instances of failure to go to your appointed place of duty, and breaking restriction.

On 17 January 1957 you were convicted by civil authorities on a charge of possession of alcohol as a minor. You received a 30 day suspended sentence and a fine of \$25.

On 19 February 1957, you were convicted by special court-martial of two periods of UA from 23 January to 8 February and 9-10 February 1957, and breaking restriction. You were sentenced to confinement at hard labor for three months, forfeitures of \$65

per month for three months, and a bad conduct discharge. The staff judge advocate noted in his review of the court-martial that the defense counsel made an unsworn statement in mitigation to the effect that your father had been involved in an automobile accident which caused the death of another person. As a result, he was sentenced to a year in prison and your mother had to move in order to earn a living. The Navy Board of Review affirmed the findings and the sentence on 3 April 1957. Thereafter, you requested remission of the discharge and restoration to duty. However, you were considered a poor risk for restoration due to your past disciplinary record and restoration was not recommended. On 17 April 1957 the Commandant of the Marine Corps recommended to the Secretary of the Navy that you receive the awarded discharge upon completion of confinement. The unexecuted portion of the sentence to confinement was remitted on 27 April 1957. You received a fourth NJP for failure to obey a lawful order on 16 May 1957 and received the bad conduct discharge on 31 May 1957.

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, regret for your actions, letters of reference, and your wife's letter. The Board also noted your contention that your parents were in an automobile accident at the time and your requests for leave were denied. The Board concluded that the foregoing facts and contention were insufficient to warrant recharacterization of your discharge given your record of four NJPs, the convictions by a summary court-martial and two special courts-martial, and the civil conviction. While your contention is partially supported by the unsworn statement during your court-martial, the Board noted that the court apparently was not convinced the automobile accident of your father justified breaking restriction and two periods of UA totalling about 17 days. Your contention that leave requests were denied is not supported by any evidence in the record or by any evidence submitted in support of your application. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. The Board thus concluded 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