



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8112-98

25 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 18 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 Navy on 17 July 1967 for four years at age 18. The record reflects that you were advanced to PFC and assigned to Vietnam on 22 December 1967. You served without incident until 2 March 1968 when you were convicted by a special court-martial of sleeping on post. You were sentenced to confinement at hard labor for four months, forfeitures of \$50 per month for four months, and reduction in rank to PVT (E-1). Thereafter, the convening authority reduced the confinement and forfeitures to three months, but suspended that portion of the sentence relating to confinement for a period of six months.

The record further reflects that you contracted malaria while in Vietnam and were medically transferred on 23 October 1968. You were eventually transferred to the naval hospital at Quantico, VA and released from treatment on 21 December 1968.

You served without further incident until 16 May 1969 when you were reported in an unauthorized absence (UA) status. You remained absent until 30 June 1969 when you were apprehended by civil authorities on stolen motor vehicle charges. On the same day you were released to military authorities. However, there is no record of any disciplinary action taken for the foregoing period of UA, or the disposition of the civil charges..

You were reported UA again on 26 November 1969 and remained absent until apprehended by civil authorities on 20 January 1970 on charges of automobile theft and illegal use. On 4 June 1970, you were convicted by civil authorities of grand larceny and unauthorized use of a motor vehicle. You were sentenced to confinement in a state penitentiary for three years, two years of which were suspended conditioned upon your good behavior. You were released from confinement and delivered to military authorities on 18 September 1970.

On 30 October 1970 you were recommended for an undesirable discharge by reason of misconduct due to conviction by civil authorities. You were advised of your procedural rights and waived those rights. A staff judge advocate (SJA) reviewed the proceedings and found them to be sufficient in law and fact. The SJA noted your Vietnam service, and that you and were pending charges for the foregoing period of UA while confined by civil authorities. It was also noted that a complete evaluation of pertinent data was not possible since only a temporary service record was available. The discharge authority directed an undesirable discharge by reason of misconduct due to civil conviction. You were so discharged on 20 November 1970. The DD Form 214 issued upon discharge shows that you were authorized to wear the Purple Heart Medal, the Bronze Star Medal, and the Navy Commendation Medal with combat "V". However, the citations for these medals are not on file in your record.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, decorated service in Vietnam, and the fact that it has been nearly 29 years since you were discharged. The Board noted your contentions to the effect that you were not UA and that after you came back from Vietnam, your records were lost and were not paid for three months. Your remaining contentions are not clearly stated. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given the serious nature of your civil conviction. The Board noted the aggravating factor that both of your UAs, totalling about 327 days, were terminated only by your apprehension by civil authorities for criminal misconduct. Your contention that you were not UA is not supported by the evidence of record. Further, individuals who

are UA are in a non-pay status. The Board has no way of determining now, 28 years later, the credibility of your statement that you received no pay for three months. Any claims for arrears in pay come under the purview of the Defense Finance and Accounting Service and not this Board. However, you should be aware that there is a six year statute of limitations on payment of such claims. You have failed to explain why you have waited nearly 29 years before complaining about such a matter or what relevance it has to the criminal misconduct which led to your discharge. The Board noted the decorations reflected on your DD Form 214, but was not convinced they outweighed the seriousness of your civil misconduct which brought great discredit upon yourself and reflected negatively on the Marine Corps and your command. 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.

You are advised that personal appearance hearings are rarely granted by the Board and only when, in executive session, it determines it cannot resolve an issue without the individual's presence, or the individual's appearance would serve some useful purpose. Your presence was not required for the Board to make a decision.

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