



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TJR  
Docket No: 1108-99  
22 July 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 20 July 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 28 August 1967 at the age of 17. Your record reflects that on 22 April 1968 you were convicted by special court-martial (SPCM) of a 45 day period of unauthorized absence (UA). You were sentenced to confinement at hard labor and partial forfeitures for three months. A portion of the confinement was suspended for six months.

Your record also reflects that on 10 September 1969 you received nonjudicial punishment (NJP) for one day of UA. The punishment imposed was reduction to paygrade E-1. The reduction was suspended for four months. Shortly thereafter, on 7 October 1969, you received NJP for two periods of UA totalling 13 day. The punishment imposed was forfeitures totalling \$50 and reduction to paygrade E-1.

On 10 December 1969 you began a 120 day period of UA that was not terminated until 8 April 1970. On 22 May 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period 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. On 24 June 1970 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 2 July 1970 you were so discharged.

Approximately seven years later, on 9 May 1977, your initial discharge was changed and you were awarded a clemency discharge pursuant to Presidential Proclamation 4313.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, low aptitude scores, combat service, awards and decorations, deprived background, personal problems, maladjustment to state-side duty, and post service conduct, and your contention that your ability to serve was impaired. The Board further considered your contention that you would like your discharge upgraded to honorable and your reason for separation changed to convenience of the government. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge or a change in the reason for separation given the serious nature of your frequent misconduct and especially your request for discharge to avoid trial for your lengthy period 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 noted that you were issued a clemency discharge under the provisions of the Presidential Proclamation No. 4313 and concluded that a further change, which would make you eligible for DVA benefits, was not warranted. The Board concluded your clemency discharge was proper as issued and no further 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