



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1659-99

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 21 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 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 18 May 1972 for two years at age 21. The record reflects that you served without incident until 13 September 1972 when you were notified that you were being recommended for discharge by reason of misconduct due to fraudulent enlistment for failure to disclose a pre-service police record. You were advised of your procedural rights and waived those rights.

On 14 September 1972 the commanding officer recommended an undesirable discharge by reason of misconduct due to fraudulent enlistment, but that the discharge be suspended for 12 months. The discharge authority approved the recommendation and directed suspension until September 1973.

On 9 March 1973 you were convicted by special court-martial of an 81 day period of unauthorized absence (UA), from 6 November 1972 to 26 January 1973. You were sentenced to confinement at hard

labor for 45 days and forfeitures of \$150 per month for two months. On 3 April 1973, the convening authority approved the sentence but suspended the confinement for a period of six months. However, on the same day, you were reported UA again and the suspension was vacated. You remained absent until you were apprehended by civil authorities 41 days, later on 14 May 1973.

The medical record reflects that while in confinement, you were seen at sick call complaining of a drinking problem. There is no evidence that you were referred for a dependency determination. The record shows that you began a second period UA on 4 June 1973 and were apprehended 53 days later on 2 August 1973. Subsequent to this second UA, you were again seen at sick call professing to be an alcoholic. You reported no alcohol use since 16 July 1973 and having the "shakes" earlier in the year, but no such symptoms since being incarcerated.

On 13 August 1973, the commanding officer recommended that the suspension of the undesirable discharge be vacated based on your special court-martial conviction and the two foregoing periods of UA. Thereafter, the discharge authority directed that you be notified that discharge proceedings were being initiated. You were notified on 11 September 1973 of the recommendation for vacation of the suspended discharge. You were advised of your procedural rights and elected representation by counsel and presentation of your case to an administrative discharge board (ADB).

On 5 October 1974 you were reported UA again. While you were UA, a ADB convened on 3 January 1974 to hear your case. You were represented by counsel. The ADB recommended that the suspension of the undesirable discharge be vacated. A staff judge advocate reviewed the proceedings and found them to be sufficient in law and fact. On 18 January 1974 the discharge authority directed that the suspended discharge be vacated. You surrendered to military authorities on 11 April 1974 and were discharged under other than honorable conditions on 22 April 1974. Block 15 of the DD Form 214 issued upon discharge shows an enlistment date of 5 August 1972, which should read 18 May 1972.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education, low test scores, and the fact that it has been 25 years since you were discharged. The Board noted your contention to the effect that you should have received a medical discharge because you were an alcoholic. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your failure to disclose a pre-service police record, a special court-martial conviction of an 81 day period of UA, and three subsequent UAs

totalling more than nine months. Available records contain no evidence that you were diagnosed with alcoholism. While alcoholism may be a mitigating factor, it does not excuse misconduct. Further, alcoholism is not a disability for which a medical discharge is authorized. The Board concluded that you were guilty of too much UA in 23 months of service to warrant recharacterization to honorable or under honorable conditions. The Board thus 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 the erroneous date shown in block 15 of your DD Form 214 is an administrative correction which does not require action by the Board. You may submit a request for correction of your DD Form 214 to the custodian of your record, the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO, 63132. You should allow at least 90 days for your record to be returned before making any 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