



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4007-99

24 September 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 27 September 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 12 August 1968 for four years at age 18. The record reflects that you were advanced to PFC (E-2) and were assigned to duty in Vietnam in January 1969 where you were twice wounded in action during March 1969. On 26 March 1969 you were transferred to a naval hospital in Jacksonville, FL and on 29 May 1969 a medical board recommended that you be placed on limited duty for six months.

The record further reflects during the five month period from June to October 1969 you received three nonjudicial punishments (NJP). Your offenses consisted of a three hour period of unauthorized absence (UA), two instances of disobedience of a lawful order, failure to go to your appointed place of duty and use of provoking words. On 13 January 1970 you volunteered for duty with Western Pacific (WESTPAC) Ground Forces and waived your restrictive assignment rights.

You then served without further incident until 21 July 1971 when you were arrested by civil authorities for stealing a woman's purse by threat of force. You were convicted by civil authorities on 18 November 1971 of robbery and sentenced to six months to four years in a state prison.

On 16 June 1972, while in the hands of civil authorities, you were notified that that you were being recommended for an undesirable discharge by reason of misconduct due to civil conviction. You were advised of your procedural rights and declined to consult with counsel. You waived your right to representation by counsel and presentation of your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended that you be separated with an undesirable discharge by reason of misconduct. On 14 July 1972 the discharge authority directed an undesirable discharge by reason of misconduct due to civil conviction. You were so discharged on 21 July 1972.

The Naval Discharge Review Board (NDRB) reviewed your case on 24 February 1981. By a vote of 3-2, the NDRB recommended that your discharge be upgraded to a general discharge because applicable regulations stated that an individual in civil confinement could not waive his right to an ADB. The majority deemed this error prejudicial since you received two Purple Heart Medals for being wounded in Vietnam, you were hospitalized for nearly four months because of these wounds, and you volunteered for a second tour with WESTPAC ground forces. The majority concluded that given the foregoing factors, an ADB might have recommended a better discharge than the one you received. The minority did not agree, noting that while in confinement you declined to consult with counsel and then waived all rights afforded you in conjunction with discharge processing. The minority argued that even if a procedural error existed, had you received an ADB it would have recommended that you be discharged with the same discharge you received. Therefore, any error was not to your prejudice and the discharge was proper as issued. On 9 December 1981, the Assistant Secretary of the Navy concurred with the minority opinion and denied your request for an upgrade of the discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, Vietnam combat service for which you were twice wounded, and the fact that it has been more than 27 years since you were discharged. The Board noted the issues considered by the NDRB and your current contention to the effect that the strong medications you were given by the hospital resulted in emotional problems and addiction. The Board concluded that the foregoing factors and contentions were insufficient to warrant

recharacterization of your discharge given your record of three NJPs and the serious nature of the offense of which you were convicted by civil authorities. Your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board reviewed the propriety of the NDRB action and concurred with the minority that if a procedural error was made, it was not prejudicial. While your combat service in Vietnam for which you received the Purple Heart with one star is mitigating, the Board did not find it overcame the serious nature of your felony conviction. Your civil conviction brought great discredit upon yourself and reflected negatively on the Marine Corps, your command, and your peers. Additionally, a Federal Bureau of Investigation report obtained by the Board noted that two years after your discharge you were again convicted of robbery by physical force and aggravated battery. The Board concluded that your 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

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The American Legion