



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

ELP
Docket No. 4034-99
23 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 15 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 14 December 1972 for four years at age 19. The record reflects that you were advanced to PFC and served without incident until 12 September 1973 when you received nonjudicial punishment for a four day period of unauthorized absence (UA). Thereafter, you were counseled regarding your marginal performance. You then served without further incident until 14 March 1974 when you were again reported UA and remained absent until you surrendered to military authorities on 8 September 1975.

On 16 September 1975 your defense counsel submitted a request to the military justice officer for consideration of an administrative discharge for the good of the service in lieu of trial by court-martial. He stated that your absence was the result of the extreme poverty your wife and children were suffering and their need for your support.

On 6 October 1975 you received a second NJP for absence from your appointed place of duty. Punishment consisted of a forfeiture of \$190.

On 31 October 1975, you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 572 day period of UA. In an accompanying statement, you said that you did not want to return to duty and would request a bad conduct discharge if you went to trial. You asserted that you needed to be home because your wife was pregnant again, your father-in-law was blind, and she lived with her uncle and all of his family. 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. The staff judge advocate reviewed the request and found it to be sufficient in law and fact. The discharge authority approved the request and directed an undesirable discharge. You were so discharged on 25 November 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, letters of reference, good post-service conduct, and the fact that is has been nearly 24 years since you were discharged. The Board noted your contentions to the effect that your ability to serve was impaired because of marital and family problems in that your wife was drinking and having an affair and neglecting the children. You assert that your family needs were more important and when the military did not listen or offer a hardship discharge, you elected to leave the Marine Corps with any type of discharge you could get.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you requested discharge rather than face trial by court-martial for more than 19 months of UA. While you may have been eligible for a hardship discharge, processing was not appropriate until all disciplinary action was resolved. Disciplinary action could not be resolved since you elected discharge. The Board is always sympathetic to individuals with family problems, however, the Board was not convinced that your marital and family problems were so severe as to warrant such a prolonged period of absence. Further, you have provided no evidence of any circumstance which would have prevented you from returning to military jurisdiction early than you did. The Board believed that considerable clemency was extended to you when the 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 concluded that you received the benefit of your bargain with the Marine Corps when the request for discharge was granted and you should not be permitted to change it now. 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