



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2730-99

3 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 1 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 reenlisted in the Marine Corps on 18 October 1956 for six years as a SGT (E-5). At the time of your reenlistment, you had completed nearly three years of prior active service.

The record reflects that you served without incident until 1 March 1957 when you were convicted by summary court-martial of a six day period of unauthorized absence (UA) from 18 to 24 February 1957. You were sentenced to a reduction in rank to CPL (E-4) and 10 days of restriction.

On 26 September 1957 you were convicted by special court-martial of three periods of UA totalling about 51 days, failure to obey a lawful order, and breaking restriction. You were sentenced to confinement at hard labor for three months, forfeitures of \$45 per month for three months, reduction in rank to PVT (E-1), and a bad conduct discharge. The convening authority approved the sentence but reduced the forfeitures to \$39 per month for three

months. The Navy Board of Review affirmed the findings and the sentence on 7 October 1957. Thereafter, you waived your right to request restoration to duty and requested execution of the bad conduct discharge. You received the bad conduct discharge on 6 December 1957.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education, prior honorable service, and the fact that it has been nearly 42 years since you were discharged. The Board also noted your contention that your prior honorable service was not given due consideration at the court-martial. The Board concluded that these factors and contention were insufficient to warrant recharacterization of your second period of service of 14 months given your convictions by a summary court-martial and special court-martial. The Board noted the aggravating factor that you waived your right to request restoration to duty, the one opportunity you had to earn a discharge under honorable conditions. You have provided neither probative evidence nor a persuasive argument in support of your application. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your second period of service. 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