



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3984-99

24 September 1999



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 22 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 Reserve on 24 August 1977 for six years at age 17. The record reflects that on 29 August 1977 you reported for initial active duty for training, were honorably released from active duty on 13 February 1978. You were transferred to the Marine Corps Reserve. You were advanced to PFC (E-2) on 12 March 1978.

The record reflects that you served without incident until sometime in 1979 when you were arrested and convicted by civil authorities of robbery. You were sentenced to 20 years in prison. Your appeal was denied and your sentence commenced on 1 October 1979.

On 2 December 1980 the officer in charge (OIC) recommended that you be discharged under other than honorable conditions by reason of misconduct due to the felony conviction by civil authorities. On 12 March 1981 a letter notifying you of the OIC's intent to discharge you was sent to the state prison in which you were

incarcerated. That letter was receipted for at the prison on 16 March 1981. The letter stated that if you failed to respond within 20 days, even if the letter was receipted for by persons other than yourself, you would be considered to have waived your rights to an administrative discharge board. No response to the letter of notification was received. On 7 April 1981, the OIC recommended your discharge. Thereafter, a staff judge advocate reviewed the discharge processing documentation and found it to be sufficient in law and fact. On 5 May 1981 the discharge authority directed discharge under other than honorable conditions by reason of misconduct due to civil conviction. On the same date, you were discharged under other than honorable conditions.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been 18 years since you were discharged. The Board noted your contention to the effect the your discharge was inequitable in that it was based on an isolated civil incident which was unrelated to your military service. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given the serious nature of the offense of which you were convicted by civil authorities. Since you were incarcerated, you were unable to fulfill your commitment to the Marine Corps Reserve. Your conviction brought great discredit upon yourself and reflected negatively on the Marine Corps Reserve, your command, and peers. You have provided neither probative evidence nor a convincing argument in support of your application. The Board 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.

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