



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

TJR  
Docket No: 945-01  
18 July 2001

[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 10 July 2001. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 4 August 1975 at the age of 17. Approximately two months later, on 7 October 1975, you were convicted by summary court-martial (SCM) of attempted auto theft, two specifications of larceny, and absence from your appointed place of duty. You were sentenced to confinement at hard labor for 30 days.

Your record reflects that on 3 March 1976 you received nonjudicial punishment (NJP) for a two day period of unauthorized absence (UA) and were awarded a \$75 forfeiture of pay and extra duty for seven days.

During the period from 19 March to 7 September 1976 you were in an UA status on three occasions for 169 days. On 24 September 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA. 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. On 3 December 1976 you received NJP

for a 17 day period of UA and were awarded restriction and extra duty for seven days. However, on 22 December 1976, you received your third NJP for a 17 day period of UA and breaking restriction. The punishment imposed was restriction and extra duty for seven days and a \$85 forfeiture of pay.

Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an other than honorable discharge for the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 29 December 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and character reference letters. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct, your repetitive periods of UA, and your request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your 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 your 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