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

TRG
Docket No: 1657-98
14 April 1999

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 13 April 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 20 January 1971 at age 17. The record shows that you received nonjudicial punishment on two occasions for two instances of disobedience. The record also shows that during the period 26 April to 24 August 1972 you participated in operations in the contiguous waters of Vietnam.

On 12 January 1973 you began a period of unauthorized absence which lasted until you were apprehended by civil authorities on 30 May 1973, a period of about 138 days. The record shows that you were then held by civil authorities until 1 August 1973. On 15 August 1973 you began another period of unauthorized absence which lasted until 27 September 1973, a period of about 42 days.

Your military record shows that on 23 October 1973 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of unauthorized absence totaling about 180 days. Your record also shows that 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 Board found that your request was granted on 4 December 1973 and, 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. You were discharged on 7 December 1973.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education and your statement concerning your deprived background. The Board also considered your contention that the discharge processing was improper because you could not make an intelligent decision to request discharge because you were withdrawing from drugs and alcohol, you were never offered rehabilitation for your substance abuse problems, and no consideration was given for your period of good service. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for two periods of unauthorized absence totaling about 180 days. 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. In effect, mitigating factors were considered in making this decision. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. In addition, the Board noted that there is no evidence in the record, and you have submitted none, concerning a drug or alcohol abuse problem. However, even if you suffered from such a problem there was no requirement to retain you for rehabilitation. Finally, there is no indication that you were unable to make an informed decision to request discharge. The Board concluded that your discharge was proper as issued 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