



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3107-99

17 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 9 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 25 June 1980 for three years at age 24. The record reflects that you were advanced to PFC (E-2) and served without incident for nearly eight months. However, during the eight month period from February to October 1981, you received two nonjudicial punishments (NJP) and were convicted by a special court-martial. Your offenses consisted of operating a motor vehicle while under the influence of alcohol and two periods of unauthorized absence (UA) totalling about 35 days.

The record further reflects that you were again advanced to PFC and served without further incident until 19 October 1982 when a Navy drug laboratory reported that a urine sample you submitted had tested positive for marijuana. On 15 November 1982 you submitted a request for discharge under other than honorable conditions for the good of the service to escape trial by court-martial for use of marijuana. 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. A staff judge advocate reviewed the proceedings and found them to be sufficient in law and fact. The discharge authority approved your request and you were discharged under other than honorable conditions on 3 December 1982.

In its review of your application, the Board conducted a careful search of your service record for any mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted your contentions to the effect that the urinalysis test result was a false positive, and that the command would not retest you or give you a trial because "it would cost too much." You assert that the discharge was unfair since you had only six months remaining on your enlistment. The Board concluded that the foregoing contentions and assertion were insufficient to warrant recharacterization of your discharge given your record of two NJPs, the conviction by special court-martial, and the fact that you accepted discharge rather than face trial by court-martial for use of marijuana. Your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board also believed that considerable clemency was extended 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 and you should not now be allowed to change it. 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