



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

TJR
Docket No: 3773-02
20 November 2002

[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 19 November 2002. 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.

You enlisted in the Marine Corps on 14 January 1972 at the age of 19. You served for a year and three months without disciplinary incident, but on 12 April 1973 you received nonjudicial punishment (NJP) for two periods of absence from your appointed place of duty and were awarded a \$50 forfeiture of pay.

On 5 March and again on 30 May 1975 you received NJP for four periods of unauthorized absence (UA) totalling 14 days, four periods of absence from your appointed place of duty, failure to obey a lawful order, and disobedience.

On 31 May 1975 you began a period of UA that was not terminated until 23 March 1976. On 5 May 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing 287 day period of UA. Prior to submitting such a request for discharge, 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 13 May 1976 your request was

granted and your commanding officer was directed to issue you an other than honorable discharge by reason of good of the service in lieu of trial by court-martial. 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, and on 26 May 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your repeated misconduct and lengthy period of UA, which also resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and 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