



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

TJR
Docket No: 8125-01
22 May 2002



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 21 May 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 3 April 1972 at the age of 20. Your record reflects that on 13 October 1972 you received nonjudicial punishment (NJP) on two occasions for feigning illness to avoid duty and failure to obey a lawful order.

On 30 January 1973 you were convicted by summary court-martial (SCM) of a 20 day period of unauthorized absence (UA) and were sentenced to confinement at hard labor for 30 days and a \$150 forfeiture of pay. On 12 April 1973 you received NJP for two periods of absence from your appointed place of duty, disobedience, and a five day period of UA. The punishment imposed was correctional custody for seven days, which was suspended for six months.

On 7 May 1973, following a medical evaluation for anxiety and failing performance, you were diagnosed with a passive aggressive personality and strongly recommended for an administrative separation. About three days later, on 10 May 1973, you received NJP for absence from your appointed place of duty and were awarded a \$25 forfeiture of pay.

During the period from 17 to 26 July 1973 you received NJP on five occasions for three periods of UA totalling 33 days, absence from your appointed place of duty, failure to obey a lawful order, disobedience, appearing at inspection unshaven, and breaking restriction. On 15 and 16 August 1973 you received NJP for three days of UA and breaking restriction.

On 30 August 1973 you began a period of UA which was not terminated until 8 July 1974. On 19 August 1974, after undergoing a psychiatric evaluation, you were diagnosed with a severe passive aggressive personality disorder. From 14 to 19 August 1974 you were again in a UA status. On 18 October 1974 you were informed of a recommendation for a general discharge by reason of unsuitability due to a character and behavior disorder. On 4 December 1974 you were again UA until 10 December 1974.

On 31 January 1975 you began a period of UA which was not terminated until 14 October 1976. Shortly thereafter, on 5 November 1976, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for these four periods of UA totalling about 945 days. 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. Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an undesirable discharge. 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 11 November 1976 you were issued an undesirable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, mental condition, and your contention that your prior application for an upgrade of your discharge had been approved. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of your repetitive misconduct which resulted in 11 NJPs and a court-martial conviction, and the frequent and lengthy periods of UA which resulted in 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. 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. Further, the Board noted that there is no evidence in the record, and you submitted none, to support

your contention that your discharge was upgraded. Further, your mental condition was insufficiently mitigating given your 12 disciplinary actions and the periods of UA for which you requested discharge. 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