



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

TRG
Docket No: 440-03
13 June 2003

[REDACTED]

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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 10 June 2003. 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.

You enlisted in the Marine Corps on 3 October 1983 at age 23. At that time, you had completed about three years of active duty in the Army. On 30 June 1985, you were arrested by Japanese authorities. On 29 May 1986, you were convicted of three instances of rape or attempted rape and were sentenced to spend six years at forced labor in a Japanese prison.

Based on your conviction by Japanese authorities, you were processed for an administrative discharge. In connection with this processing, you elected to waive the right to have your case heard by an administrative discharge board. After review, the discharge authority directed discharge under other than honorable conditions by reason of misconduct. However, the discharge was held in abeyance until you were released from prison. You were released from prison on 24 April 1989 and received the discharge under other than honorable conditions on 9 June 1989.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service and your contention, in effect, that you were improperly convicted and were not allowed to present an adequate defense.

The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your conviction by Japanese authorities of serious offenses. Filed in your record is a report by the Marine Staff Judge Advocates who observed the trial. The report sets forth all of the testimony and evidence used against you. The trial observers concluded that all of the safeguards required by the Status of Forces Agreement were observed during the trial. The Board thus concluded that the 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.

The Board believes that you are eligible for veterans' benefits based on your prior honorable service in the Army. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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