



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

TJR
Docket No: 8288-98
15 July 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 7 July 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Navy on 9 September 1981. Your record shows that you served for nearly three years without incident but on 23 August 1984 you received nonjudicial punishment (NJP) for wrongful use of marijuana. Shortly thereafter, on 22 October 1984, you received NJP for one day of unauthorized absence (UA).

Your record contains an adverse enlisted performance evaluation for the period from 1 April 1984 to 13 February 1985 in which you were identified as a substance abuser. The evaluation noted, in part, as follows:

(Member's) professional performance has declined drastically.... he demonstrates little pride in himself or his work habits.... requires constant supervision.... has developed trend of absenting himself.... exhibits little initiative to improve himself.... has been identified as a substance abuser on several occasions through command directed and random urinalysis testing.... his military appearance and personal demeanor have been well below Navy

standards.... is an administrative burden.... has been experiencing medical problems with his wrist but it is not a factor in the majority of tasks assigned to him.... not recommended for advancement or retention.

On 13 February 1985 you received your third NJP for a day of UA and two incidents of wrongful use of marijuana. The punishment imposed was forfeitures totalling \$960, restriction for 60 days, and reduction to paygrade E-4.

Your record further reflects administrative remarks (page 13) entries which note that you were absent from your appointed place of duty on five occasions during the period from 19 February to 4 June 1985. Also during this period, your commanding officer noted, in part, as follows:

....(Member) exhibited no potential for future military service.... received NJP on 13FEB85 for two specifications of wrongful use of marijuana.... convicted by SPCM for desertion (prior to reenlistment).... will process for an administrative separation.

Subsequently, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial. 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. Your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. 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 9 September 1985 you were issued an other than honorable discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your contention that you would like your discharge upgraded. The Board further considered your contention that at the time of your discharge, your thought processes were effected by medication which caused you to make bad decisions. The Board also considered your performance evaluations, letters of rebuttal, and character reference letters. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your drug related misconduct and especially your request for discharge. 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. Further, the Board concluded that you received the

benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Given all the circumstances of your case the Board concluded 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