



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8713-98

21 May 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 19 May 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 Navy on 18 June 1997 for four years as an SA (E-2). The record reflects that you served without incident until 5 December 1997 when a Navy drug laboratory reported that your urine sample on 24 November 1997 had tested positive for cocaine. On 18 December 1997, your commanding officer provided the drug laboratory a list of the prescription drugs you were taking and requested that your urine sample be re-tested. The drug laboratory reported on 23 December 1997 that your specimen was re-tested and was confirmed positive for cocaine.

You received nonjudicial punishment (NJP) on 9 February 1998 for use of cocaine. Punishment imposed consisted of reduction in rate to SR (E-1), a forfeiture of \$200, and 14 days of restriction and extra duty.

On 2 March 1998, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to drug abuse as evidenced by the foregoing positive urinalysis test. You were advised of your procedural rights and elected to present your case to an administrative discharge board (ADB).

You appeared before an ADB with counsel on 27 April 1998. The ADB heard your testimony and that of s CTIC (E-7) and your department head, a chief warrant officer (W-4). After reviewing the testimony and numerous statements attesting to your character, the ADB found that you had not committed misconduct and you were retained in the Navy.

However, on 18 May 1998, you were dropped from CTI "A" school for disciplinary reasons and were assigned to general duty. You submitted a special request on 15 December 1998 to be reinstated to your former pay grade since the ADB found no misconduct. However, the commanding officer denied your request, noting that the reduction was the result of NJP and the action of the ADB did not overturn a judicial proceeding.

In its review of your application the Board conducted a careful search for any mitigating factors which might warrant removing the NJP and restoring all rights, privileges, and property lost as the result of the disciplinary action on 9 February 1998. However, no justification could be found. Your contention that the ADB overturned the NJP at which you were punished is without merit. The NJP authority found you guilty of use of cocaine by a preponderance of the evidence. Absent evidence that the chain of custody was broken, there appears to have been no abuse of discretion by the NJP authority to impose NJP. While there were conflicting adjudications based on the same evidence, only the commanding officer determines guilt or innocence at NJP. If an ADB makes findings which are contrary to an NJP, those contrary findings apply only to the administrative separation action. The ADB cannot overturn the NJP. The Board believes that you were extremely fortunate that the ADB found that you committed no misconduct. 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