



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

ELP
Docket No. 4373-01
18 October 2001

[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 Navy Records, sitting in executive session, considered your application on 17 October 2001. 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 9 June 1999 for four years at age 18. The record reflects that on 28 April 2000, an Evaluation Report and Counseling Record was submitted after you received nonjudicial punishment (NJP) for an unspecified period of unauthorized absence. Punishment imposed was a suspended reduction in rate to YNSR (E-1), 30 days of correctional custody, and forfeiture of one-half of one month's pay. Additionally, you were counseled regarding your misconduct and warned that failure to take corrective could result in separation under other than honorable conditions.

On 2 October 2000 you received a second NJP for failure to obey a lawful regulation and use of a controlled substance. The reduction in rate suspended on 28 April 2000 was vacated, and forfeitures of \$502.60 per month for two months were imposed.

On 3 October 2000 you were notified that discharge under other than honorable conditions was being considered by reason of misconduct due to drug abuse and a pattern of misconduct. You were advised of your procedural rights, declined to consult with legal counsel or submit a statement in your own behalf, and waived the right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a positive urinalysis.

On 27 October 2000 the discharge authority directed an other than honorable discharge by reason of misconduct due to drug abuse. You were so discharged on 28 November 2000 with an RE-4 reenlistment code. Your DD Form 214 also shows a period of lost time from 30 October to 19 November 2000, for which no disciplinary action was taken.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant recharacterization of your discharge or a change in your reenlistment code. However, no justification for such changes could be found. The Board noted your desire to enlist in the Army and your contention that you were rushed out of the Navy after a positive urinalysis without any counseling or rehabilitation. The Board concluded that your contention was insufficient to warrant recharacterization of your discharge given your record of two NJPs, one for use of a controlled substance, and 20 days of lost time for which no disciplinary action is shown in the record. Only individuals who are diagnosed as being drug dependent are provided rehabilitation treatment. This treatment is normally accomplished at a Department of Veterans' Affairs treatment facility prior to an individual's separation, and does not terminate the discharge processing action or change the characterization of service. Available records do not show that you were drug dependent. Further, the Board noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct due to drug abuse. The Board thus concluded that the discharge and reenlistment code are proper and no changes are 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

