



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

ELP
Docket No. 8088-01
19 April 2002

[REDACTED]

Dear Mr. Costner:

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 April 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 28 July 1997 for four years at age 18. The record reflects that you were advanced to SN (E-3) and served without incident until 27 October 1998 when a Navy drug laboratory reported that your urine sample received on 21 October 1998 had tested positive for amphetamines/methamphetamine. On 29 October 1998 you received nonjudicial punishment (NJP) for use of a controlled substance. Punishment imposed consisted of a reduction in rate to SA (E-2), forfeitures of one-half of one month's pay for two months, and 45 days of restriction and extra duty.

On 16 November 1998 you were notified that administrative separation action was being initiated by reason of misconduct due to drug abuse. You were advised of your procedural rights and told that if discharge was approved, it could be under other than honorable conditions. You 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. On 25 November 1998, the discharge authority directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 30 November 1998.

On 16 June 2000 the Naval Discharge Review Board (NDRB) denied your request for an upgrade of the discharge. You told the NDRB that you were wrong to become involved with drugs, but youth, inexperience, and easy access to drugs were contributing factors.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the other issues you presented to the NDRB. Your current contention is that one of your shipmates fooled you into taking illegal drugs is neither supported by the evidence of record nor by any evidence in support of your application. Further, this contention is quite different from what you told the NDRB. You also claim that since your appeal to the NDRB, you have completed your associates degree. However, you provide no evidence supporting evidence. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your use of a controlled substance in violation of the Navy's policy of zero tolerance. The Board concluded that the discharge was proper 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