



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

ELP
Docket No. 2518-01
17 January 2002



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 16 January 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 20 August 1990 for four years at age 18. Prior to your enlistment, you signed a statement that you had been advised regarding the Navy's policy on the illegal use of drugs and the consequences that would result from such use. The record reflects that you were advanced to MR3 (E-4) and extended your enlistment for an additional period of 12 months on 3 September 1991.

You served without incident until 1 April 1992 when a Navy drug laboratory notified the command that the urine specimen you provided on 11 March 1992 had tested positive for marijuana. On 9 April 1992 you received a nonjudicial punishment (NJP) for a two hour period of unauthorized absence and use of marijuana. Punishment imposed consisted of forfeitures of \$425 pay per month for two months, reduction in rate to MRFN (E-3), and 30 days of extra duty. On the same day, you were notified that administrative separation action was being initiated to discharge you under other than honorable conditions by reason of misconduct due to use of a controlled substance as evidenced by a positive urinalysis. 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). You did not object to the discharge.

On 14 April 1992 the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. The Chief of Naval Personnel approved the recommendation and directed discharge under other than honorable conditions and assignment of an RE-4 reenlistment code. You were so discharged on 26 May 1992.

In its review the Board conducted a careful search of your record for any mitigating factors which might warrant a change in the characterization of service, reason for discharge or reenlistment code. However, no justification for any such changes could be found. The Board noted your contention that the reason for discharge was improper because it was based on only one incident in 21 months of service. However, the Board also noted that at the time of your enlistment, you were advised of the consequences of using illegal drugs. Your use of marijuana despite knowing the consequences for such action demonstrated a willful disregard for the Navy's zero tolerance policy. 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. Your belief that one incident should not ruin a career is without merit. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct due to drug abuse. The fact that you are now older and more mature does not provide a valid basis for recharacterizing service or changing a valid reenlistment code. The Board concluded that the discharge, the reason for discharge and reenlistment code were 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