



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

CRS
Docket No: 3659-02
13 September 2002

[REDACTED]

[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 31 July 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. The Board also considered the advisory opinion, dated 9 May 2001, from the Navy Drug Testing Program Manager, a copy of which is attached.

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. In this regard, the Board substantially concurred with the comments set forth in the advisory opinion.

The Board found that you reenlisted in the Navy on 5 January 2001 after more than eight years of prior active service. The record reflects that on the afternoon of 29 May 2001, you submitted a urine sample that subsequently tested positive for marijuana. You received nonjudicial punishment (NJP) on 13 July 2001 for use of marijuana based on the positive urinalysis. The punishment imposed consisted of a forfeiture of \$944 and a reduction from petty officer first class (GSE1; E-6) to petty officer second class (GSE2; E-5).

On 30 July 2001 you appealed the NJP based on an investigation into the chain of custody of the urine samples, and a negative analysis of a hair sample you submitted to a private laboratory after the NJP. On 27 August 2001 the commanding officer, in his endorsement on your appeal, stated that the civilian laboratory that tested the hair sample had advised the command that its

analysis did not invalidate the prior positive urinalysis. The commanding officer also rejected your contention concerning the investigation, since it pertained to collection of urine samples on the morning of 29 May 2001, and you gave your sample on that afternoon. Further, the commanding officer attached a statement from the urinalysis coordinator to the effect that your sample had been collected and stored properly. Finally, the Navy drug laboratory reported that no urine sample showed any signs of tampering. Your appeal was denied on 2 November 2001.

On 14 November 2001 an administrative discharge board (ADB) found that you had not committed misconduct, and you were retained in the Navy. In their deliberations, the ADB considered the hair sample, but made its finding based on the investigation of the chain of custody procedures and your testimony to the effect that you could have been exposed to marijuana through inadvertent ingestion.

The Board considered your contention about innocent ingestion. The advisory opinion stated that second hand marijuana smoke would not cause a false positive urinalysis. The Board concurred with the advisory opinion.

With regard to your contentions pertaining to the chain of custody of the urine samples, and the analysis of your hair sample, the Board concurred with the remarks in the commanding officer's endorsement of your NJP appeal to the effect there was no chain of custody problem with your urine sample, and that the analysis of your hair sample did not cast any doubt on the positive urinalysis result. The Board additionally concluded that the ADB also apparently did not rely on the hair analysis in reaching its favorable result.

The Board also found that the NJP and the ADB are two separate proceedings, and a favorable result at the latter does not invalidate the former. This is especially true in your case since the commanding officer's decision at NJP that you had used drugs was reasonable, given the positive urinalysis; and since the ADB did not consider any evidence that was not considered by the commanding officer, either at the NJP or during the appeal process. 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

Enclosure