CRS
Docket No: 4782-02
10 January 2003

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 7 January 2003. 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 Marine Corps on 4 December 1996. A psychiatric evaluation, conducted on 2 July 1997, found that you had an adjustment disorder and that you had used drugs in an attempt to be discharged. On 26 July 1997 you made a statement that in May 1997 you had gone to Mexico and used marijuana. The record reflects that on 31 July 1997 you received nonjudicial punishment for failing to obey a lawful regulation by going to Mexico and using marijuana.

On 27 August 1997 the commanding officer recommended that you be separated with an other than honorable discharge by reason of misconduct due to drug abuse. When informed of the recommendation, you elected to waive the right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and on 5 October 1997 you were discharged with an other than honorable discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the contentions that your fragile state of mind rendered you incapable of making an incriminating statement, you were not advised of your right against self incrimination, a single instance of drug use should not have resulted in discharge, subsequent drug tests were negative, pressure from your commanding officer contributed to the incriminating statement, and the statement was made under mental distress.

Although your were diagnosed with an adjustment disorder, such a diagnosis would not render you incapable of making a statement against your interests. The record does not specifically reflect that you were advised of your right against self-incrimination. However, even if you were not, this failure to so advise you does not render your statement inadmissible at NJP or in administrative separation proceedings. Any drug tests that you took are essentially irrelevant, since you received NJP and separated based on your incriminating statement. In accordance with Marine Corps policy, all drug abusers are processed for separation, and those separated normally are discharged under other than honorable conditions. Concerning your allegations of command pressure and coercion, the Board noted that you have submitted no evidence to support these contentions, and the record contains no such evidence. 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

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