



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

ELP  
Docket No. 6057-00  
9 February 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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 7 February 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 28 January 1991 for four years at age 18. The record reflects that on the day following your enlistment, the recruit training command determined that you should be retained in the Naval Service, despite a defective enlistment due to fraudulent entry because of your failure to disclose pre-service civil involvement.

Your record further reflects that you were advanced to SA (E-2) and served for nearly six months without incident. However, during the three month period from July to September 1991, you received a nonjudicial punishment (NJP) and were convicted by a summary court-martial. Your offenses consisted of sleeping on watch, failure to obey a lawful order or regulation, and incapacitation for the performance of your duties.

On 10 January 1992, you received a second NJP for two instances of use and possession of a controlled substance. However, the NJP was stayed and all rights and privileges were restored. A

drug disposition report filed on 2 March 1992 indicated that a urinalysis you consented to on 15 January 1992 had tested positive for marijuana. Your enlisted performance evaluation for the period ending 31 January 1992 was adverse and marks of 1.0 were assigned in the categories of reliability, military bearing, and personal behavior.

On 18 March 1992, a second drug disposition report showed that you tested positive again for marijuana on a 27 February 1992 surveillance urinalysis. The report stated that you were not dependent and had no potential for continued service. --

On 22 April 1992 you were convicted by special court-martial of use of marijuana in February apparently based on the positive urinalysis of 27 February 1992. You were sentenced to confinement at hard labor for three months, forfeitures of \$500 per month for three months, and a bad conduct discharge. However, on 30 November 1993, the Navy-Marine Corps Court of Military Review set aside the conviction and dismissed the charges, and all your rights, privileges, and property were restored.

On 14 October 1994, you were released from active duty under honorable conditions and transferred to the Naval Reserve by reason of reduction in force. You were issued an honorable discharge upon completion of your military obligation on 18 December 1998.

Individuals released by reason of reduction in force receive the type of characterization warranted by the service record. Character of service is based, in part, on personal behavior and overall trait averages. Your military behavior and overall trait averages were 2.8, and 3.4, respectively. A minimum average mark of 3.0 in personal behavior was required for a fully honorable characterization at the time of your release from active duty.

In its review of your application, the Board conducted a careful search of your service record for any mitigating factors which might warrant changing the characterization shown on your DD Form 214 to fully honorable. However, no justification for such a change could be found. The Board noted that five days after the NJP for use and possession of marijuana was set aside, you tested positive again for use of marijuana. This urinalysis and the fact you had a summary court-martial conviction during the reporting period appeared to be the primary factors for an adverse evaluation on 31 January 1992. While you were successful in getting an NJP and a special court-martial conviction overturned, the Board concluded that there was an insufficient basis for changing the characterization shown on your DD Form 214 given your record of an NJP, a conviction by summary court-

martial, the positive urinalysis in January 1992, and the fact that you failed to achieve the required average in personal behavior. The fact that you were issued an honorable discharge upon completion of your military obligation was erroneous and does not compel the Board to take corresponding action on the DD Form 214. The Board concluded that the characterization shown on the DD Form 214 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