



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

TJR
Docket No: 11112-07
6 November 2006

[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 5 November 2008. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You reenlisted in the Naval Reserve on 5 December 1987 and served without disciplinary infraction until 17 April 1991, when your urine sample tested positive for cocaine. On 21 April 1991 you were referred for a medical evaluation because of your alcohol and cocaine abuse. The physician found that you were not amenable to counselling, drug and alcohol education, or rehabilitation because you were likely to experience drug and alcohol problems in the future. At that time you were diagnosed with a personality disorder with mixed avoidant features.

On 27 June 1991 you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). On 5 October 1991 an ADB recommended discharge under honorable conditions by reason of misconduct due to drug abuse. On 31 October 1991 your commanding officer concurred with the recommendation of the ADB.

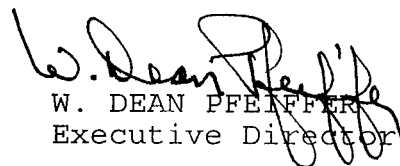
Shortly thereafter, on 13 November 1991, the discharge authority approved these recommendations and directed a general discharge by reason of misconduct, and on 15 November 1991 you were so discharged, and assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service, post service conduct, character reference letters, and prior proceedings from both the Naval Discharge Review Board and a panel of BCNR. It also considered your request for dismissal of the offense of cocaine abuse since you were not in an actual duty status. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge or a change in your narrative reason for separation because of your positive urinalysis for cocaine. Further, the Board stated that your request for dismissal of the cocaine offense should also be denied. In this regard, the Board noted that disciplinary action may not be taken unless it can be determined that the drug abuse occurred during the time when the reservist was the subject of the Uniform Code of Military Justice (UCMJ). However, it further noted that a reservist can be administratively separated by reason of misconduct due to drug abuse, such as in your case. Finally, Sailors separated by reason of misconduct normally receive other than honorable discharges. As such, the Board noted that you were fortunate to receive a general discharge. 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