



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

TJR
Docket No: 11188-07
14 November 2008

[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 13 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 enlisted in the Navy on 7 August 1978 at age 18 and served without disciplinary incident until 3 May 1979, when you received nonjudicial punishment (NJP) for a 13 day period of unauthorized absence (UA). Shortly thereafter, on 12 July 1979, you received NJP for absence from your appointed place of duty.

On 2 May 1980 you received NJP for wrongful possession of marijuana and were awarded a \$254 forfeiture of pay, reduction to paygrade E-2, and restriction and extra duty for 30 days. About five months later, on 17 October 1980, you were convicted by special court-martial (SPCM) of wrongful possession, sale, transfer, and conspiracy to sell marijuana. You were sentenced to reduction to paygrade E-1, confinement at hard labor for two months, and a \$150 forfeiture of pay.

On 6 November 1980 you were notified of pending administrative separation action by reason of misconduct due to drug abuse. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB).

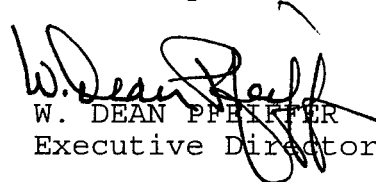
On 28 January 1981 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. Subsequently, the discharge authority approved this recommendation, and on 2 February 1981 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and assertion that you have paid for your past offenses. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repeated drug related misconduct. Finally, you were given an opportunity to defend yourself, but waived your procedural rights to present your case to an ADB. 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 PFENKFER
Executive Director