



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

TJR
Docket No: 5392-08
8 April 2009



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 April 2009. The names and votes of the members of the panel will be furnished upon request. 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.

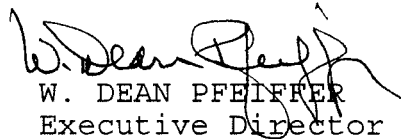
You enlisted in the Navy on 8 May 1986 at age 18 and began a period of active duty on 13 August 1986. You served for nearly two years without disciplinary incident, but on 6 April 1986 you received nonjudicial punishment (NJP) for wrongful use of marijuana. The punishment imposed was a \$750 forfeiture of pay, reduction to paygrade E-2, and restriction and extra duty for 45 days.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. On 11 April 1988 you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 25 April 1988 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. On 4 May 1988 the discharge authority approved this recommendation, and on 3 June 1988 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 desire to upgrade your discharge. It further considered your assertion that you "made up" a story about using drugs so that you could be discharged. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your drug related misconduct. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, it is well settled in the law that if a Sailor procures a discharge by fraud, he or she should not benefit from the fraud when it is discovered. As such, if you lied to get out of the military, as you have stated, no corrective action would be appropriate. Accordingly, your application has been denied.

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