



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

TJR
Docket No: 8039-08
14 July 2009

[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 7 July 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 reenlisted in the Navy on 22 October 1982 after five years of prior honorable service. You continued to serve without disciplinary incident until 29 July 1983, when you were convicted by special court-martial (SPCM) of a 69 day period of unauthorized absence (UA).

On 13 December 1984 and again on 20 February 1985 you received nonjudicial punishment (NJP) for wrongful use of marijuana and two specifications of wrongful use of cocaine.

On 21 February 1985 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 13 March 1985 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse as evidenced by positive urinalysis for seven incidents of cocaine use and two incidents of marijuana use during the period from 21 January to 5 March 1985. On 22 March 1985 the discharge authority approved this recommendation for discharge, and on 24 March 1985 you were issued an other than honorable discharge by reason of misconduct due to drug abuse.

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, and desire to upgrade your discharge. It also considered your assertion of medical and/or physical problems, specifically, the loss of five toes. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive drug related misconduct and your lengthy period of UA from the Navy. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Accordingly, your application has been denied.

You may be eligible for veterans' benefits which accrued during your first period of service. Whether or not you are eligible is a matter under the cognizance of the Department of Veterans Affairs (DVA). If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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