



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

TJR  
Docket No: 13161-09  
17 September 2010



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 14 September 2010. 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.

Your record reflects that in January 2006 you signed pre-enlistment documents in which you stated "NO" to drug and alcohol abuse questions, and that you were fully aware and understood the Navy's "Zero Tolerance Policy." On 27 January 2006 you enlisted in the Navy at age 17 and began a period of active duty on 14 July 2006, at which time you reaffirmed the pre-enlistment document statements.

You served for nearly three years without disciplinary infraction, however, on 11 November 2008, you were counselled regarding unauthorized use of government computers as evidenced by your viewing and downloading pornography. About six months later, on 27 May 2009, you stated, during a medical history examination, that you had used illegal drugs or abused prescription drugs prior to enlisting in the Navy. Following a review of your medical history report, it was determined that

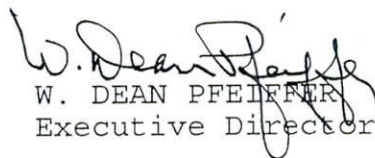
your "affirmative" response regarding drug and alcohol abuse was contrary to the response you gave on your pre-enlistment documents.

It appears that you were subsequently notified of administrative separation action by reason of fraudulent enlistment due to your failure to disclose your pre-service drug and alcohol abuse involvement. After waiving your procedural rights to consult with legal counsel and an administrative discharge board, your commanding officer recommended an other than honorable discharge by reason of fraudulent entry due to drug abuse. Prior to your separation, you received a performance evaluation which stated in part, that you had been to a disciplinary review board on two occasions, amassed 11 counselling chits, did not maintain standards in basic hygiene, were quick to provide excuses for your behavior, and were not recommended for retention or reenlistment. On 28 May 2009 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of fraudulent entry, and on 12 June 2009, you were so discharged and were 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 youth, desire to upgrade your discharge, change your reenlistment code, and the narrative reason for separation. It also considered your assertion that a recruiter failed to submit a drug waiver prior to your enlistment. Nevertheless, the Board concluded these factors were not sufficient to warrant relief because of your failure to disclose your pre-service drug and alcohol abuse. The Board concluded that your failure to disclose this information was sufficient to support the assignment of an RE-4 reenlistment code, which is authorized by regulatory guidance. 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