



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

ELP
Docket No. 6134-00
12 March 2001

[REDACTED]

Dear [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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 7 March 2001. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 29 September 1978 for four years at age 18. The record reflects that you were advanced to RMSN (E-3) and served without incident until 21 July 1980 when you were convicted by civil authorities of possession of marijuana. You were fined only \$10 since this was your first offense.

You were advanced to RM3 (E-4), extended your enlistment for an additional period of four months, and served without further incident until 15 March 1982, when you received nonjudicial punishment (NJP) for use of marijuana. Punishment imposed consisted of a suspended reduction in rate to RMSN (E-3), forfeitures of \$200 per month for two months, and 40 days of restriction.

On 20 October 1982 you received a second NJP for possession of marijuana residue. Punishment imposed was a reduction in rate to

RMSN (E-3), forfeitures of \$380 per month for two months, and 60 days of restriction. At the time of this NJP, you had been frocked to RM2 (E-5). Thereafter, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to drug abuse. You were advised of your procedural rights and elected to present your case to an administrative discharge board (ADB).

On 1 December 1982 you appeared before an ADB with counsel. The Board heard your testimony and that of your division officer, leading petty officer, and two signalmen. You testified that you had stopped smoking marijuana in August 1981 and would give a 100 percent effort if allowed to remain on board. You asserted that you did not smoke marijuana in October 1982 despite the positive urinalysis. The marijuana residue was found in your car on the pier and in a peacoat found in your locker. You claimed that the coat was not yours. Counsel requested that you be given a general discharge if the ADB felt you should not be retained. However, the ADB recommended that you be discharged under other than honorable conditions by reason of misconduct.

Counsel appealed the ADB findings, stating that residue found in your car was from earlier in the year and not from any current involvement with drugs. The peacoat did not belong to you and was found after you left the ship for a period of leave. Counsel also noted that the senior member of the ADB was not an O-4 line officer. He recommended that the ADB be disapproved or and in the alternative, that the discharge be suspended or that you receive a general discharge. Thereafter the commanding officer (CO) recommended that you be discharged under other than honorable conditions. The CO noted in his recommendation that on 28 October 1982, the ship received the results of a probable cause urinalysis taken on 21 October 1982 which tested positive for marijuana. This test result cast doubt on your denial of marijuana use and constituted yet another incident of drug usage. The CO noted counsel's appeal and forwarded it with the ADB proceedings.

On 12 January 1983, the Commander, Naval Military Personnel Command requested the rationale for not assigning a line officer of the grade of LCDR (O-4) to the ADB. It was further directed that the ADB procedures be re-executed and you be informed that you were being processed for discharge under other than honorable conditions by reason of misconduct due to drug abuse. The need to reconvene the ADB with all new members was also mentioned in the message.

On 20 January 1983, the CO advised CNMPC that there were three LCDRs on board, one was your department head and it was feared he

might prejudice the board, one was on temporary additional duty out of the area, and the remaining LCDR was a restricted line officer. The CO stated that after reviewing the verbatim tape of the ADB proceedings, there was no doubt that it was clearly understood by all concerned that you were being processed for misconduct due to drug abuse since it was specifically mentioned by your counsel in his opening and closing statements. Further, the appointment letter instructed the board to conduct a hearing in your case for processing by reason of misconduct. The CO asserted that reconvening another ADB could not be completed prior to the expiration of your enlistment and if the previous ADB action was not acceptable, you would be discharged with an honorable discharge. The CO did not believe an honorable discharge to be appropriate. On 20 January 1983, CNMPC directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 28 January 1983.

The Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge on 27 February 1995.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, two periods of satisfactory service, your excellent promotion record, and the fact that it has been more than 18 years since you were discharged. The Board noted the issues you presented to the NDRB in 1995 and your contentions that you served your full enlistment and performed all of your duties in an honorable and professional manner. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of a civil conviction and two NJPs, all of which were drug related. The Board specifically noted that the senior member of the ADB was not a line officer, and the CO's rationale why a staff corps officer was assigned as the senior member in your case. Absent evidence that such assignment was prejudicial, the Board concluded that it did not invalidate the ADB proceedings. The fact that you completed your enlistment did not preclude you from being discharged under other than honorable conditions on the last day of that enlistment. The Board believed that three drug related offenses and a positive urinalysis prior to the ADB demonstrated a willful disregard for the Navy's drug policy. The Board concluded that the discharge was proper and no change is warranted. 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