



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

ELP  
Docket No. 6821-00  
22 June 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 20 June 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 reenlisted in the Navy on 31 October 1997 for two years as a FC1 (E-6). At the time of your reenlistment, you had completed nearly 15 years of active service.

The record reflects that during the next 10 months you served without incident. However, during the 12 month period from August 1998 to August 1999 you received two nonjudicial punishments (NJP) for three brief periods of unauthorized absence totalling about two days, failure to muster, and failure to go to your appointed place of duty. As a result of the second NJP, you were reduced in rate to FC2 (E-5).

On 22 September 1999 a Navy drug laboratory reported that you had tested positive for amphetamine/methamphetamine. The following day, you received your third NJP for use of an amphetamine/

methamphetamine. Punishment imposed was reduction in rate to FC3 (E-4), forfeitures of \$742 per month for two months, and 45 days of restriction and extra duty.

On 12 October 1999 you were notified that administrative discharge action was being initiated by reason of misconduct due to a pattern of misconduct and drug abuse. After being advised of your procedural rights, you declined to consult with legal counsel or submit a statement in your own behalf, and waived the right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of pattern of misconduct and drug abuse and on 22 October 1999, the discharge authority approved the recommendation. You were so discharged on 27 October 1999.

You request a review of the NJP that was imposed in August 1999. The Board also noted your contention that you were not allowed to review the evidence that was considered at NJP and were denied the opportunity of legal counsel before NJP. An individual may consult with legal counsel prior to the imposition of NJP if reasonably available. However, there is no right to counsel prior to NJP. The Board has been unsuccessful in obtaining the NJP evidence that was considered in your case. In order to justify correction of a military record, you must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or that you were unjustly treated by the Navy. You have failed to submit any evidence that would satisfy the aforementioned requirement. Absent the NJP evidence, a presumption exists that there was no abuse of discretion when NJP was imposed in August or September 1999.

The Board did not consider the characterization of your discharge since you have not exhausted your administrative remedies by first applying to the Naval Discharge Review Board (NDRB). The NDRB is authorized to change both the reason for discharge and the characterization of discharge. Enclosed is a DD Form 293 which may be used to apply to the NDRB.

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

Enclosure