



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

ELP
Docket No. 103-02
19 April 2002

[REDACTED]

[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 Navy Records, sitting in executive session, considered your application on 17 April 2002. 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 Marine Corps on 30 June 1980 for four years at age 18. The record reflects that you served without incident until December 1980 when you received nonjudicial punishment (NJP) for possession of marijuana. You served during the next 18 months without further incident and were advanced to LCPL (E-3). However, during the four month period from July to November 1982, you received two more NJPs for use of marijuana and a brief period of UA of about an hour. On 14 February 1983 you were formally counseled for writing checks with insufficient funds.

On 25 April 1983 you were convicted by general court-martial of stealing \$73, two specifications of possession of marijuana, and two specifications of distributing marijuana. You were sentenced to confinement at hard labor for 15 months, total forfeitures, reduction in rank to PVT (E-2), and a bad conduct discharge. The

Navy-Marine Corps Court of Military Review affirmed the findings and the sentence on 15 August 1984. On 11 September 1984 the Court of Military Appeals set aside as multiplicitious the two specifications of possession of marijuana, but affirmed the sentence. You received the bad conduct discharged on 30 October 1984.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the fact that it has been more than 17 years since you were discharged. The Board noted your statement; the letters from your wife, daughter, and pastor; the letters of reference attesting to your character, sobriety, and good post-service conduct; and your work with recovering alcoholics and addicts. The Board noted your contentions to the effect that you received a harsher sentence than many of the individuals with whom you were confined, you were charged with additional offenses that were untrue, and your lawyer did not work in your best interest and failed to follow through on your list of character witnesses. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs, two of which were for drugs, and the serious nature of the offense of which you were convicted by general court-martial. The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence should be reduced as a matter of clemency. In other words, claims that you were not guilty of certain offenses, counsel was incompetent or did not act in your best interest, or other mistakes of law were made, cannot be considered by the Board because that is the purpose of an appeal. The Board noted that your case was reviewed by the Court of Military Appeals, which dismissed two specifications as multiplicitious, but did not change the sentence. Your conviction of the remaining offenses and the punitive discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are advised that personal appearance hearings are rarely granted by the Board and only when, in executive session, it determines the issues cannot be resolved without the individual's presence, or the individual's appearance would serve some useful purpose. Your presence was not required for the Board to make a decision.

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