



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

ELP
Docket No. 514-02
9 May 2002

[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 of the Board for Correction of Navy Records, sitting in executive session, considered your application on 8 May 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.

You enlisted in the Navy on 12 April 2000 for four years at age 19. The record reflects that on the following day, you were referred to the recruit mental health unit for evaluation. You reported that you had been diagnosed with an attention deficit/hyperactive disorder and were taking Ritalin through the sixth grade, when you stopped taking the medication. You claimed your grades dropped in high school due to involvement with drugs and, between the ages of 15-19, you used marijuana 4-5 times a week. The examining psychologist opined that you suffered from a dysthymic disorder given reported symptoms of depressed or irritable mood, poor appetite, insomnia, low energy, low self-esteem, and poor concentration or difficulty making decisions. You were diagnosed with dysthymic disorder, cannabis abuse, and an oppositional-defiant disorder. An entry level separation was recommended.

On 18 April 2000 you were notified that separation processing was being initiated by reason of defective enlistment and induction

due to erroneous enlistment as evidenced by the diagnosed dysthymic and oppositional-defiant disorders. You were advised of your procedural rights, declined to consult with legal counsel or submit a statement in your own behalf, and waived the right to have your case reviewed by the general court-martial convening authority. On 19 April 2000 the discharge authority directed an uncharacterized entry level separation by reason of erroneous enlistment. You were so discharged on 24 April 2000.

Regulations authorize the assignment of an RE-4 reenlistment code to individual separated by reason erroneous enlistment. The Board noted your statement that when you left for recruit training, you were extremely worried about your mother, who was undergoing chemotherapy had heart problems. You contend you were unaware that you could have postponed your enlistment, and you started attempting to go home during the "moment of truth" interviews. You claim that you disregarded your ethics and lied, but soon learned that lies would not be sufficient to get a discharge. A shipmate told you that referral to the recruit evaluation unit (REU) was your only "way out." You assert that while in the REU you responded to questions in such a manner that would result in discharge. The Board is not sympathetic to individuals who obtain discharges through fraud. The Board found it difficult to determine what your true statement is, the one you are making now, or the one you made in recruit training to extricate yourself from your commitment. It is well established in law that an individual who perpetrates a fraud in order to be discharged should not benefit from the fraud when it is later discovered. The Board concluded that the reenlistment code 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