



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

TRG
Docket No: 2936-02
13 August 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the 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 6 August 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 Marine Corps on 29 March 1984 at age 22. On 6 November 1985 and 15 April 1986 you received nonjudicial punishments for possession and use of marijuana. On 17 July 1986 you were recommended for discharge by reason of misconduct due to drug abuse with a characterization of service of under other than honorable conditions. On 21 August 1986 you were charged with using PCP.

On 30 September 1986 you acknowledged that you were not recommended for reenlistment due to separation in lieu of trial by court-martial. The documentation to support discharge for this reason is not filed in your service record. However, regulations require that prior to submitting a request for discharge in lieu of trial by court-martial, an individual confer with a qualified military lawyer, be advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. When a request for discharge is granted, the individual is spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. A DD Form 214 in the record shows

that you were discharged under other than honorable conditions on 9 October 1986.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the copy of the DD Form 214 you submitted showing that you received an honorable discharge by reason of separation in lieu of trial by court-martial. However, the DD Form 214 on file in your record correctly shows that you were discharged under other than honorable conditions. The Board found that recharacterization of your discharge was not warranted given your record of misconduct and especially your request for discharge to avoid trial for the offense or offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued 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