



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

TJR
Docket No: 4990-01
15 January 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 Naval Records, sitting in executive session, considered your application on 8 January 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 12 July 1988 at the age of 17. Your record reflects that you served for a year and 10 months without disciplinary incident but on 11 May 1990 you received nonjudicial punishment (NJP) for a 16 day period of unauthorized absence (UA) and wrongful use of cocaine during the period from 4 to 6 April 1990. The punishment imposed was a \$842 forfeiture of pay, restriction and extra duty for 45 days, and a reduction to paygrade E-3.

On 18 May 1990 you were notified of pending administrative separation action by reason of misconduct due to drug abuse. At that time you waived your rights to consult with legal counsel, present your case to an administrative discharge board, and to submit a statement in rebuttal to the discharge. On 22 May 1990 your commanding officer recommended you be discharged under other than honorable conditions by reason of misconduct due to drug abuse. The recommended noted, in part, as follows:

(Member) has been on active duty for 22 months.... he has had ample exposure to the Navy's zero tolerance toward drug abuse and yet he used cocaine.... while his appearance on 11 May 1990 for this offense was his first, wrongful use of an illegal drug is unacceptable conduct.... his overall performance has been marginal at best, and he demonstrated no potential for further useful Naval Service.... I strongly recommended this immediate administrative discharge, under other than honorable conditions.

Subsequently, on 13 June 1990, the discharge authority directed an other than honorable discharge by reason of misconduct due to drug abuse. On 12 July 1990 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, good post service conduct, and the character reference letters submitted in support of your case. The Board further considered your contentions that clemency is warranted in your case because the punishment you received was too severe compared to today's standards, and that it is an injustice for you to continue to suffer the adverse consequences of an other than honorable discharge. However, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge or a change in your reason for separation or reenlistment code because of the serious nature of using cocaine, your period of UA, and your marginal performance. Given all the circumstances of your case, the Board concluded your discharge, narrative reason for separation, and reenlistment code were 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