



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

TJR  
Docket No: 8408-06  
10 July 2007

[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 10 July 2007. 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.

You enlisted in the Navy on 5 August 1991 at age 19 and served for two years and six months without disciplinary incident. However, on 31 January 1994 you began a period of unauthorized absence (UA) and were declared a deserter. On 3 February 1994, a drug and alcohol report (DAAR) stated that your urine sample, which was collected during the period from 18 to 28 January 1994, tested positive for marijuana.

On 27 March 1994, while in the foregoing UA status, you were apprehended by civil authorities. As a result, on 18 April 1994, you were convicted by civil authorities of driving while intoxicated and held in confinement with a projected release date of 27 November 1995. However, on 8 July 1994, you were released to military custody, thus terminating your period of UA.

On 10 August 1994 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA totalling 103 days. Prior to submitting this request, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 12 August 1994 your request was granted. On 26 August 1994, as evidenced by the 3 February 1994 DAAR, you received nonjudicial punishment (NJP) for wrongful use of marijuana. The punishment imposed was a \$934 forfeiture of pay, restriction and extra duty for 45 days, and reduction to paygrade E-2.

During the period from 4 to 14 September 1994 you were referred for a medical evaluation because you were found drunk while on restriction. Subsequently, you were diagnosed as alcohol dependent and recommended for rehabilitation at a veterans' administration facility.

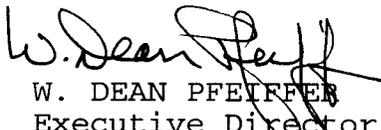
On 26 October 1994 you received an other than honorable discharge in lieu of trial by court-martial in accordance with your 10 August 1994 request. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and request to upgrade your discharge. It also considered your assertion that you should have received a medical discharge because of your drug and alcohol problems, which is the sole reason for your discharge. The Board further considered the character reference letters and certificates submitted in support of your case. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your lengthy period of UA from the Navy which resulted in your request for discharge, and the seriousness of your drug and alcohol related misconduct in both the military and civilian communities. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. 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