



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

TJR
Docket No: 7617-07
9 July 2008

[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 Naval Records, sitting in executive session, considered your application on 8 July 2008. 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 Naval Reserve on 2 May 1977 at age 17. You served without disciplinary incident until 31 August 1978, when you received nonjudicial punishment (NJP) for wrongful possession and use of marijuana. The punishment imposed was restriction and extra duty for 25 days and a \$300 forfeiture of pay. Shortly thereafter, on 7 September 1978, you received NJP for wrongful possession of marijuana and were awarded restriction and extra duty for 20 days, and a \$300 forfeiture of pay. The forfeitures were suspended for six months, however, about five months later, on 15 February 1979, the forfeitures were vacated due to your continued misconduct.

On 2 March 1979 you were convicted by summary court-martial (SCM) of wrongful possession and use of marijuana, wearing civilian attire, nonconformance, and using provoking language. You were sentenced to confinement at hard labor for 30 days. On 23 May 1979 you were again convicted by SCM of a one day period of unauthorized absence (UA) and were sentenced to confinement at hard labor for 15 days and a \$150 forfeiture of pay.

On 22 October 1979 you were notified of pending administrative separation action by reason of misconduct due to drug abuse. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 23 November 1979 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. On 12 December 1979 this recommendation was approved and the discharge authority directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. On 14 January 1980 you received an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and assertion that your discharge was unjust because it was based on your disciplinary record and not your pre-existing mental/medical record. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your drug related misconduct. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, there is no evidence in the record, and you submitted none to support your assertion of a pre-existing mental/medical condition. Be advised that even if such evidence existed, applicable directives state that if a Sailor is processed for separation by reason of a mental/medical condition, but meets the requirements of another reason, such as misconduct, the Sailor will be processed for the latter reason. 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