



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

TJR
Docket No: 8057-07
3 October 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 1 October 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 Navy on 25 August 1977 at age 18 and served without disciplinary incident for two years and six months. However, on 19 February and again on 7 April 1980, you received nonjudicial punishment (NJP) for, presumably, two unspecified periods of unauthorized absence (UA), missing the movement of your ship, and wrongful use of a controlled substance. On 10 April 1980 you received NJP for disobedience, failure to obey a lawful order, breaking restriction, absence from your appointed place of duty, and wrongful possession of marijuana.

Your record contains a drug disposition message dated 6 May 1980 which states, in part, that you were screened for a drug rehabilitation program in which you briefly participated, but were no longer interested in treatment since you had no desire to discontinue using drugs. About a month later, on 3 June 1980, you received your fourth NJP for three periods of UA totalling 25

days and three periods of absence from your appointed place of duty. The punishment imposed was a \$400 forfeiture of pay, reduction to paygrade E-1, and restriction for 30 days.

On 11 February 1981 you were convicted by special court-martial (SPCM) of two periods of UA totalling 126 days, insubordination, 20 specifications of failure to obey a lawful order, making a false official statement, and an unspecified offense. You were sentenced to a \$1,000 forfeiture of pay, confinement at hard labor for five months, and a bad conduct discharge (BCD). Subsequently, the BCD was approved at all levels of review, and on 15 December 1981 you were so discharged.

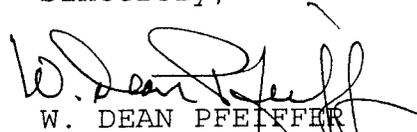
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and assertion that your BCD is both an error and unjust as evidenced by your recent diagnosis of a bi-polar disorder. It also considered your post service psychiatric, mental, and/or medical evaluations and the character reference letters submitted in support of your case. Nevertheless, these factors were not sufficient to warrant recharacterization of your discharge because of the frequency and seriousness of your drug related misconduct and lengthy periods of UA. Also, the Board noted that even though you were given treatment for your drug abuse, you had no desire to discontinue the use of illegal drugs and were not amendable to counselling. Further, even if you had been diagnosed with a mental and/or medical disorder and recommended for separation, the recommendations of medical or psychiatric authorities are not binding on your command, especially if you met the requirements of another reason for separation, such as misconduct. In this regard, you were not diagnosed with any medical or psychiatric condition and the only reason for your discharge was due to misconduct. 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