



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

TJR
Docket No: 8182-07
9 October 2008

[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 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 28 April 1981 at age 18 and began a period of active duty on 24 September 1981. You served without disciplinary incident until 6 March 1982, when you received nonjudicial punishment (NJP) for wrongful possession and use of marijuana and were awarded a \$550 forfeiture of pay and restriction and extra duty for 30 days. About a month later, on 5 April 1982, you were convicted by civil authorities of resisting arrest, battery on a police officer, and possession of a glass container on the beach. You were sentenced to confinement for one day and a \$50 fine. On 12 August 1982 you were convicted by special court-martial (SPCM) of larceny of property in excess of \$100 and housebreaking. You were sentenced to restriction and hard labor for 60 days, a \$700 forfeiture of pay, and reduction to paygrade E-1.

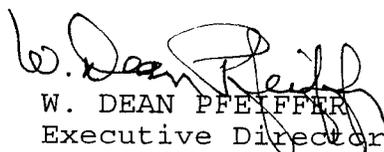
On 16 June 1983 you received NJP for wrongful possession and use of marijuana, and wrongful possession of drug paraphernalia and a dangerous weapon. The punishment imposed was restriction and extra duty for 45 days and a \$514 forfeiture of pay. Shortly thereafter, on 27 June 1983, you were notified 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 24 July 1983 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse and commission of a serious offense. On 29 July 1983 the discharge authority approved this recommendation and on 11 August 1983 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, post service conduct, and assertion that your discharge was improper for the offenses for which it was based. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your drug related misconduct and the seriousness of your misconduct in both the military and civilian communities. Further, you were given an opportunity to defend yourself, but waived your procedural rights to present your case to an ADB. Finally, the record contains documented evidence that is contrary to your assertion. 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