



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

TRG
Docket No: 9635-07
11 July 2008

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You reenlisted in the Marine Corps on 12 January 1991 with about four years of active service on a prior enlistment. On 19 June 1991, you received nonjudicial punishment (NJP) for wearing an earring while in uniform. The punishment imposed included a reduction in rank from corporal to lance corporal. On 16 January 1992, you received NJP for use of marijuana. The punishment included a reduction in rank to private first class, 60 days restriction and forfeitures of pay which was suspended.

Based on the foregoing record, you were processed for an administrative discharge by reason of misconduct due to drug abuse. Although it is not stated in the record, it appears that you elected to waive the right to have your case considered by an administrative discharge board. After review, the discharge authority directed discharge under other than honorable conditions by reason of misconduct and you were so discharged on 17 March 1992.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service. You further contend that your NJP for wearing an earring was improper because you were not wearing an earring but had only had your ear pierced so that you could wear one off

duty. You further contend that given your version of events that a reduction in rank was too severe and you should be reinstated as a noncommissioned officer. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your documented drug use. It is clear that you knew the possible consequences of drug usage but did so anyway. Since you have been treated no differently than others in your situation, the Board concluded that the discharge under other than honorable conditions was proper as issued and no change is warranted.

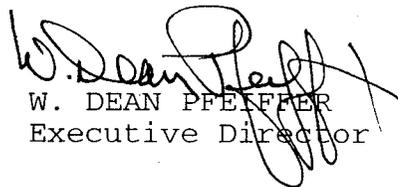
Please be advised that NJP evidence is routinely destroyed after several years, and the only evidence is the entry in your service record showing that you received NJP for wearing an earring while in uniform. It is clear that if you had been improperly charged you would have contested that issue at the time. Given the passage of time, there is no basis to change the NJP punishment to show that you were not reduced. However, even if you had been serving as a corporal when you received NJP for drug abuse, you would have been reduced in grade at that time.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You may be eligible for veterans benefits based on your honorable service in your first enlistment. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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 PFEFFER
Executive Director