



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

JRE
Docket No. 02961-08
7 August 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 7 August 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.

The Board found that you enlisted in the Navy Reserve Delayed Entry Program on 28 December 1976. You entered on extended active duty on 28 June 1977, and were honorably discharged on 2 December 1981. You reenlisted in the Navy the following day and completed a Report of Medical History on that date in which you denied having a history of head injury and periods of unconsciousness. You received nonjudicial punishment on 22 February 1985 for wrongful use of marijuana. The punishment included the forfeiture of \$490.00 pay, and reduction to pay grade E-4. You completed a Report of Medical History on 4

November 1985, in which you denied having a history of head injury and periods of unconsciousness. You underwent a pre-separation physical examination on that date, and were found qualified for duty at sea and on foreign shores, as well as for release from active duty. The examining physician did not note any significant defects, other than a fungal infection, and you did not disclose any conditions you felt warranted further evaluation or treatment. You were convicted by summary court-martial on 26 February 1986 of wrongful use of marijuana, and sentenced to confinement at hard labor for 30 days, and reduction to pay grade E-2. On 17 March 1986, after being advised of your rights in connection with your proposed discharge by reason of misconduct-drug abuse, you waived all rights except the right to obtain copies of documents forwarded to the discharge authority. On 27 March 1986, you completed a Report of Medical History in which you disclosed that you had sustained a head injury of unspecified severity, but once again denied having a history of periods of unconsciousness. You were discharged by reason of misconduct/drug abuse on 31 March 1986, with a discharge under other than honorable conditions.

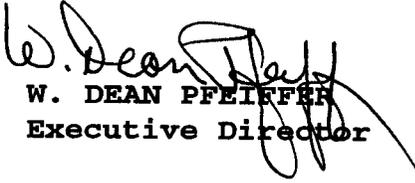
The Naval Discharge Review Board (NDRB) denied your request for upgrade of your discharge on or about 2 October 1986. The NDRB found, among other things, that while "there is evidence of the applicant having gastrointestinal problems while in the Navy, the Board fails to see how these problems could cause or justify the applicant's use of illegal drugs".

The Board could find no credible evidence in your application or the available records which establishes that you sustained a significant head injury which caused you to lack mental responsibility for your actions. In addition, it could not find any credible evidence that you did not wrongfully use marijuana on at least two separate occasions, or that you were unfit for duty by reason of physical disability. It noted that you would not have been eligible for disability separation or retirement even if you had been unfit for duty, as your discharge by reason of misconduct would have taken precedence over disability evaluation processing. 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