



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

SMS
Docket No: 4254-08
26 January 2009



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 23 January 2009. 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.

On 17 August 1979, you reenlisted in the Marine Corps at age 19 after a prior period of honorable service. During the period 17 January to 14 April 1980, you had nonjudicial punishment (NJP) on three occasions and suspended punishment vacated. Your offenses included assault, possession of hashish, failure to go to your appointed place of duty, and possession of drug paraphernalia containing traces of marijuana. On 16 June 1980, you were counseled regarding your misconduct and informed that you were being considered for administrative separation due to your frequent discreditable involvement. During the period 20 July 1981 to 22 October 1982, you had NJP on two occasions and were convicted by a summary court-martial. Your offenses

included four instances of disobedience of a lawful order and failure to go to your appointed place of duty. On 26 October 1982, you were warned that further infractions could result in administrative separation. On 7 November 1982, you were counseled for illegally killing a beaver while assigned to a night navigation course. On 16 November 1982, you were counseled for having possession of shotgun shells and a lock blade knife and consumption of alcohol in your room. You were also warned that further infractions could result in disciplinary action. On 17 December 1982, you had NJP for failure to obey a lawful order by having shotgun shells in your room. You were also warned that further infractions could result in disciplinary action or an other than honorable discharge. On 26 May 1983, you were counseled regarding your urinalysis that tested positive for marijuana.

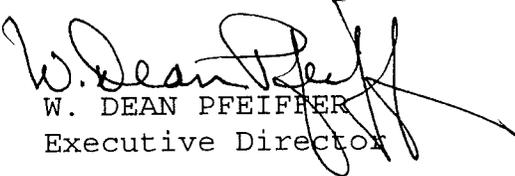
On 29 September 1983, you were convicted by a special court-martial (SPCM) for distribution of lysergic acid diethylamide (LSD). Your sentence included reduction in rank, forfeitures of pay, confinement at hard labor, and a bad conduct discharge (BCD). On 18 October 1983, you had NJP for use of marijuana. After the BCD was approved at all levels of review, on 26 February 1985, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your prior period of honorable service and contention that you only distributed LSD because you were encouraged to do so by another Marine. Nevertheless, the Board concluded that these factors and contention were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct for which you were convicted of by a SPCM. Furthermore, the record shows that you had eight other disciplinary actions, some of which were also for drug-related offenses. Therefore, the Board concluded that the discharge was proper as issued and no change is warranted. 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