



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

TJR  
Docket No: 4282-08  
19 March 2009

[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 17 March 2009. The names and votes of the members of the panel will be furnished upon request. 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 7 November 1972 at age 18. On 4 April 1973 you were granted an exemption waiver for your use of marijuana and nerve pills while on liberty. About four months later, on 2 August 1973, you received nonjudicial punishment (NJP) for a two day period of unauthorized absence (UA).

On 8 August 1973, during an investigation regarding the possession, use, and sale of illegal drugs, you submitted a written statement regarding 17 specifications of possession, use, and sale of marijuana, mescaline, and lysergic acid diethylamide (LSD). This statement also stated that you and eight other Sailors and a civilian participated in this drug related activity during the period from December 1972 to August 1973.

On 19 February 1974 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for only seven specifications of the foregoing drug related misconduct, which were wrongful possession and use of marijuana, LSD, and mescaline. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 5 March 1974 your commanding officer recommended your request be approved even though your original guilty plea of 17 specifications of possession, use, and sale of marijuana, LSD, and mescaline could not be corroborated due to a lack of evidence. Subsequently, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

On 15 March 1974 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, desire to upgrade your discharge, explanation regarding the circumstances of your discharge, and the passage of time. It also considered your assertion that you were not offered drug rehabilitation because you did not testify against other Sailors regarding illegal drug usage. If further considered your assertion that you were not informed by your legal counsel of the characterization of the discharge that you were requesting. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your drug related misconduct and your request for discharge to avoid trial by court-martial for this misconduct. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Finally, there is documented evidence in the record that is contrary to your assertions. Accordingly, your application has been denied.

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