



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

SMS
Docket No: 4498-08
5 February 2009

[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 4 February 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 29 June 1984, you reenlisted in the Navy at age 29 after two prior periods of honorable service. On 5 March 1985, your urinalysis tested positive for marijuana. On 28 March 1985, you had nonjudicial punishment (NJP) for use of marijuana. On 24 April 1985, you received a substance abuse evaluation which found that you were not dependent on drugs. Administrative separation was subsequently initiated, but was later directed to be reprocessed to afford you administrative discharge board (ADB) procedures. On 31 May 1985, your commanding officer initiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, you acknowledged that separation could result in an other than honorable (OTH) discharge and elected to have your case heard by an ADB. On 20 June 1985, an ADB convened and found that you were guilty of misconduct due to drug abuse, and recommended a general discharge. On 23 August 1985, you had NJP for use of marijuana based on your urinalysis that tested positive for marijuana. Based on your continued misconduct, the administrative separation action for which you were recommended for a general discharge was terminated.

On 29 August 1985, your commanding officer reinitiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, you acknowledged that separation could result

in an OTH discharge and waived the right to have your case heard by an ADB. On 2 October 1985, the separation authority approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to drug abuse. On 4 October 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 periods of honorable service, regret for your misconduct, and desire for an honorable discharge. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct that continued even after administrative separation action was initiated. The Board also noted that your case was initially heard by an ADB, which recommended a general discharge, but that action was terminated after you had another NJP for use of marijuana. Administrative separation action was then reinitiated and you waived the right to have your case heard by an ADB, which was your best opportunity for retention or a more favorable characterization of service. 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.

The Board noted that as a result of your prior periods of honorable service, you may be eligible for veterans' benefits. You should contact the nearest office of the Department of Veterans Affairs if you desire clarification about your eligibility for those benefits.

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