



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

SMS  
Docket No: 5789-08  
26 February 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 25 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 13 January 1987, you enlisted in the Marine Corps at age 24. On 7 July 1987, your urinalysis tested positive for cocaine. On 4 January 1988, you were counseled regarding deficiencies in the performance of your duties, specifically, driving a government vehicle in a reckless manner. At that time, you were also warned that further infractions could result in disciplinary action or administrative separation. On 10 February 1988, you had nonjudicial punishment for use of cocaine. You were also counseled regarding drug abuse and warned that further infractions could result in an other than honorable (OTH) discharge. During the period 12 to 13 May 1988, you were in an unauthorized absence (UA) status. On 19 May 1988, you were in a UA status when you failed to attend a substance abuse counseling appointment. During the period 20 May to 24 June 1988, you were in a UA status on two occasions totaling about 33 days. On 9 August 1988, you were convicted by a summary court-martial of four instances of UA totaling 34 days.

Based on the information currently contained in the record it appears that your commanding officer subsequently initiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, you would have acknowledged that separation could result in an OTH discharge and been afforded the right to have

your case heard by an administrative discharge board (ADB). Apparently the separation authority approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to drug abuse. On 30 August 1988, you declined substance abuse treatment at a Veterans Affairs facility. On 24 October 1988, you were separated with an OTH discharge by reason of misconduct due to drug abuse.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth and post service conduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your service due to the seriousness of your misconduct that continued even after you were warned that further infractions could result in an OTH discharge. Furthermore, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. The Board also noted that you had 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.

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