



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

TJR
Docket No: 6469-08
21 May 2009



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 12 May 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.

On 19 August 1987 you signed pre-enlistment documents in which you stated, in part, that you had used marijuana. Although a waiver for enlistment was not required, you were advised that any future drug involvement would result in an administrative separation.

You enlisted in the Navy on 21 August 1987 at age 17 and began a period of active duty on 19 January 1988. You served without disciplinary infraction until 8 February 1988, when, as a result of a urinalysis, you were identified as a drug abuser.

On 30 August 1990 you received nonjudicial punishment (NJP) for a four day period of unauthorized absence (UA). About a month later, on 27 September 1990 you received NJP for wrongful use of marijuana. Shortly thereafter, on 30 September 1990, you were

notified of pending administrative separation action by reason of misconduct due to drug abuse. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 7 October 1990 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. This recommendation stated, in part, that your urine tested positive on two occasions, you did not object to being discharged, your drug use adversely affected combat readiness and could not be tolerated, and your presence onboard was prejudicial to good order, discipline, and morale.

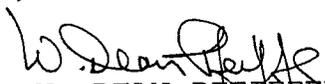
On 29 November 1990 you received your third NJP for failure to obey a lawful order, drunk and disorderly conduct, and communicating a threat. On 1 December 1990 you were referred for a medical evaluation due to drug use, specifically, marijuana and barbiturates. You were found not to be physiologically dependent, but psychologically dependent on marijuana. You were recommended for further evaluation at a Navy counselling and assistance center and for an administrative discharge. Shortly thereafter, on 5 December 1990, the discharge authority approved the recommendations for discharge, and on 14 January 1991 you were issued an other than honorable discharge by reason of misconduct due to drug abuse.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as youth and desire to upgrade your discharge. It also considered your assertions that you were not addicted to any drugs, made the mistake of using marijuana while on liberty, and was discharged two days prior to your expiration of enlistment. The Board further considered your assertion that if you were such a detriment to the Navy, you should not have been held by Navy authorities for five months after your positive urinalysis. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive drug related misconduct. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, the Board concluded that your record contains documented evidence 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 PREIFFER
Executive Director