



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

TJR
Docket No: 7464-08
5 June 2009

[REDACTED]

Dear [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 3 June 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 27 January 1981 at age 17 and began a period of active duty on 2 February 1981. Shortly thereafter, in March 1981, you were notified that you would be retained in the Navy despite of your fraudulent entry as evidenced by your failure to disclose pre-service drug use of cocaine and marijuana. You were also advised that any further misconduct would result in an administrative discharge.

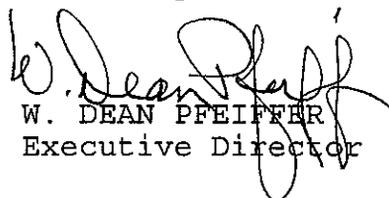
You served without disciplinary incident until 16 March 1983 when, you received nonjudicial punishment (NJP) for wrongful possession of marijuana. The punishment imposed was reduction to paygrade E-2, restriction and extra duty for 45 days, and a \$642.90 forfeiture of pay.

On 1 August 1983 you were referred for a medical evaluation as a result of being in possession of marijuana. Although you were found not to be dependent on drugs, you were diagnosed as an apparent social user and were not recommended for further service. Shortly thereafter, on 3 August 1983, 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 14 August 1983 your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. On 19 August 1983 the discharge authority approved this recommendation for discharge, and on 24 August 1983 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 in possession of marijuana and that you were treated unfairly. The Board further considered your assertion that you were not given sufficient time for your "system to clear" before being tested for drugs. 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 prior to and while serving in the military. 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 PFEIFFER
Executive Director