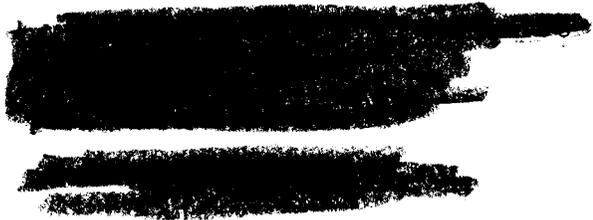




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

SMS  
Docket No: 7887-08  
7 May 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 6 May 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 5 November 1986, you enlisted in the Marine Corps at age 22. During the period 11 June 1987 to 12 January 1988, you had nonjudicial punishment on four occasions, were convicted by a summary court-martial, and had two suspended punishments vacated. Your offenses included assault, use of cocaine, drunk and disorderly conduct, communicating a threat, absence from your appointed place of duty, disobedience of a lawful order, and dereliction in the performance of your duties. On 1 March 1988, you were counseled regarding deficiencies in your performance and conduct, warned that further infractions could result in disciplinary action or an other than honorable (OTH) discharge, and informed where substance abuse assistance was available. During the period 24 March to 5 April 1988, you were in an unauthorized absence (UA) status, and on 5 April 1988, the date that your period of UA ended, your

urinalysis tested positive for cocaine. On 13 June 1988, you requested an OTH discharge for the good of the service to avoid trial by court-martial for charges of use of cocaine and the 12 day period of UA. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 17 June 1988, the separation authority approved your request for an OTH discharge for the good of the service to avoid trial by court-martial. On 18 July 1988, you were so discharged. 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.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your youth. The Board also considered your contention that you had a substance abuse problem that was never addressed and belief that your OTH discharge would automatically be upgraded. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Regarding your contention, the record shows that you were informed that substance abuse assistance was available and there is no evidence in the record to show that you were ever denied assistance. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. Furthermore, 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. 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