TJR
Docket No: 7498-08
12 June 2009

Dear ▓▓▓▓▓▓▓▓:

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 9 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 Marine Corps on 24 January 1984 at age 18 and served for a year and five months without disciplinary incident. However, on 22 May 1985, you were convicted by special court-martial (SPCM) of a one day period of unauthorized absence (UA), failure to obey a lawful order by having a pellet gun in the barracks, destroying government property, discharging a pellet gun, and wrongful possession of marijuana. You were sentenced to confinement at hard labor for two months, a $200 forfeiture of pay, and reduction to paygrade E-1.

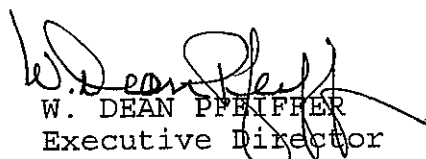On 4 February 1986 you were convicted by summary court-martial (SCM) of wrongful use of marijuana and sentenced to a $426 forfeiture of pay and confinement at hard labor for 30 days. About three months later, on 28 May 1986, you were notified of pending administrative separation action by reason of misconduct 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). Your commanding officer recommended an other than honorable discharge by reason of misconduct due to drug abuse. On 11 July 1986 the discharge authority approved this recommendation and on 25 July 1986 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 assertion that you were told that you were being discharged under an "early-out" program and that your discharge would be automatically upgraded six months after your separation from the Marine Corps. 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 which resulted in convictions by SPCM and SCM. The Board concluded that you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Further, the Board concluded that your record contains documented evidence that is contrary to your assertion of being discharged in accordance with an "early-out" program. Finally, no discharge is automatically upgraded due solely to the passage of time. 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

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