



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

TJR  
Docket No: 2309-09  
18 February 2010

[REDACTED]

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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 17 February 2010. 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 were recalled to active duty in the Navy on 16 March 1989 after serving four years of prior honorable service. On 29 March 1989, after undergoing a physical evaluation, your urine sample, taken on 20 March 1989, tested positive for cocaine. Although you admitted using marijuana, you denied using cocaine. However, the results of a polygraph examination noted that your answers regarding the use of knowingly ingesting cocaine were untruthful.

As a result, on 16 May 1989, you were convicted by summary court-martial (SCM) of wrongful use of cocaine and making a false official statement by denying the use of cocaine. You were sentenced to a \$613 forfeiture of pay and confinement for 17 days.

On 14 June 1989 you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). Subsequently, an ADB recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. However, due to an administrative error, specifically, assignment of improper board members for reservists, this recommendation was not considered and your commanding officer was directed to reprocess you for an administrative separation.

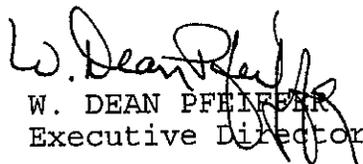
In March 1990 you were again notified of pending administrative separation action by reason of misconduct due to drug abuse. After consulting with legal counsel, you elected to present your case to an ADB. On 15 March 1990 a second ADB recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. On 3 April 1990 your commanding officer, in concurrence with the ADB, also recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. On 26 April 1990 the discharge authority approved these recommendations and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to drug abuse, and on 4 May 1990, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your period of honorable service, desire to upgrade your discharge, and assertion that cocaine was "induced" to you. It also considered your assertion that the ADB was improperly convened. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your drug related misconduct which resulted in a SCM. Further, there is documented evidence in the record that is contrary to your assertion that the ADB was improperly convened. Finally, there is no evidence in the record, and you submitted none, to support your assertion regarding how you tested positive for cocaine use. 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