



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

TJR
Docket No: 792-10
11 March 2010

[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 9 March 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 reenlisted in the Navy on 30 August 1989 after six years of prior honorable service. You continued to serve without disciplinary infraction until 8 January 1996, when your urine sample tested positive for marijuana. On 27 January 1996 you submitted a sworn statement in which you admitted, in part, that you had smoked marijuana while drunk and that it was a one time occurrence that was a terrible mistake. Nonetheless, on 31 January 1996, you received nonjudicial punishment (NJP) for wrongful use of marijuana. The punishment imposed was a \$1,800 forfeiture of pay, restriction for 60 days, and a reduction to paygrade E-5.

On 7 February 1996 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). On 3 March 1996

an ADB recommended retention even though you had committed misconduct due to drug abuse. On 4 March 1996 your commanding officer, in concurrence with the ADB, also recommended retention. However, on 25 July 1996 the discharge authority disapproved these recommendations and directed your commanding officer to issue you a general discharge under honorable conditions by reason of misconduct due to drug abuse, and on 13 September 1996, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and desire for revocation of your discharge based on the recommendation of the ADB. It also considered your assertion that your urine sample tested positive as a result of secondhand smoke. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization or revocation of your discharge because of the seriousness of your self-admitted drug related misconduct which resulted in NJP. 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