



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

TJR
Docket No: 2181-10
14 January 2011

[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 11 January 2011. 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 Marine Corps on 22 December 1981 after about seven years of prior honorable service. You continued to serve without disciplinary incident until 26 October 1982, when you received nonjudicial punishment (NJP) for wrongful fraternization with a student and were awarded a \$50 forfeiture of pay.

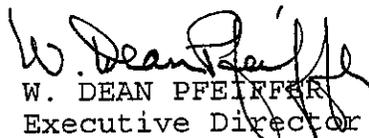
On 3 February 1983 you received NJP for wrongful possession and use of marijuana. About five months later, on 21 July 1, 1983, you were convicted by summary court-martial (SCM) of wrongful use and possession of marijuana. You were sentenced to confinement at hard labor for 29 days, a \$350 forfeiture of pay, and reduction to paygrade E-1. Shortly thereafter, on 1 October 1983, you were convicted by civil authorities. However, the record does not reflect the charges for which you were convicted or the sentence of the civil court.

On 26 October 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). Subsequently, your commanding officer recommended discharge under honorable conditions by reason of misconduct due to drug abuse. However, on 29 November 1983, the discharge authority approved the recommendation for discharge, but directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to drug abuse, and on 1 December 1983, 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 your desire to upgrade your discharge so that you may obtain benefits. It also considered your assertion that your discharge should be upgraded because you served well and only "smoked weed/used marijuana" on your own time. 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 two NJPs and a court-martial conviction. Finally, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. 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