



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

TJR
Docket No: 3619-10
9 February 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 8 February 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 enlisted in the Navy on 12 January 2009 at age 38 and began a period of active duty on 2 November 2009. Shortly thereafter, on 5 November 2009, a drug laboratory report stated that your urine sample tested positive for marijuana. As a result, on 9 November 2009, you were notified of pending administrative separation by reason of misconduct due to drug abuse. After electing your procedural rights, you objected to the separation and submitted a rebuttal statement to the aforementioned notification. This statement noted, in part, that your urine sample tested positive due to "second hand smoke." However, on 23 November 2009, a Navy Drug Screening Laboratory determined that your sample was not positive due to passive inhalation of marijuana as evidenced by the high level of marijuana metabolites found in your urine. The screening reflected a significantly higher level of marijuana metabolites than that of the Navy's cutoff level. Subsequently, on 29 November 2009, your commanding officer recommended

separation by reason of erroneous entry due to drug abuse. On 3 December 2009 the separation authority approved this recommendation and directed an uncharacterized entry level separation by reason of erroneous entry due to drug abuse. On 8 December 2009 you were so separated and assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to change your reenlistment code and post service conduct. Nevertheless, the Board concluded these factors were not sufficient to warrant a change of your reenlistment code because of your pre-service drug abuse, which is sufficient to support both the uncharacterized entry level separation and assignment of an RE-4 reenlistment code. Finally, such a code is authorized by regulatory guidelines and required to be assigned to Sailors who are separated due to drug abuse and are not recommended for retention or reenlistment. 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