



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

TJR  
Docket No: 10268-10  
8 July 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 6 July 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 Marine Corps on 14 May 1987 at age 18 and served for nearly a year without disciplinary incident. However, on 3 May 1988, you received nonjudicial punishment (NJP) for wrongful use of marijuana. The punishment imposed was a forfeiture of pay, extra duty for 45 days, and a suspended reduction to paygrade E-1.

On 16 February 1989 you received NJP for failure to obey a lawful order by consuming alcohol in an unauthorized area and disobeying a lawful order by driving while on base revocation. On 13 and 16 March 1989 you were counselled regarding deficiencies in your performance and conduct, specifically, alcohol related offenses, spouse abuse, involvement with and the use of illegal drugs, and your unsatisfactory and unacceptable conduct.

Your record contains a military traffic incident report which notes that you were apprehended, issued a citation to appear in court, and that your vehicle was impounded because you were

driving under the influence of alcohol or drugs, consuming alcoholic beverages while being under the legal age, and had failed a breathalyzer on two occasions. On 25 April 1989 a portion of the foregoing misconduct was referred for trial. As a result, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for underage drinking, wrongful consumption of alcoholic beverages, drunken driving, and wrongful use of marijuana. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 23 May 1989 you were issued an other than honorable discharge.

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. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which included drug abuse, and resulted in two NJPs and your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. 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