



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

TJR  
Docket No: 1158-11  
9 March 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 March 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 6 July 1994 at age 29. You served for a year and one month without disciplinary infraction. However, during the period from 18 August 1995 to 7 March 1996 you were in an unauthorized absence (UA) status on four occasions for nine days and missed the movement of your ship. The record does not reflect the disciplinary action taken, if any, for this misconduct. However, on 19 April 1996, you began another period of UA that was not terminated until 23 April 1996.

On 1 May 1996, after undergoing a psychiatric evaluation, you were diagnosed with an adjustment disorder with depressed mood, alcohol dependence, homicidal and suicidal ideation, and a severe personality disorder which rendered you unsuitable for military service. You were recommended for an expeditious administrative separation because you posed a danger to yourself, others, and government property. Shortly thereafter, on 15 May 1996, you received nonjudicial punishment (NJP) for a four day period of UA and missing the movement of your ship. At this time you were warned that any further misconduct could result in an

administrative separation by reason of misconduct. Nonetheless, on 2 June 1996, you began yet another period of UA that was not terminated until you were apprehended by civil authorities and charged with soliciting a police officer for prostitution on 18 June 1996. You again missed the movement of your ship while in this UA status. On 10 July 1996 you were convicted by civil authorities of solicitation of prostitution. You were sentenced to probation for 90 days, confinement for 15 days, and a \$100 fine, which was suspended. You were also directed to get an AIDS test and to be evaluated for substance abuse.

On 1 August 1996 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for a 31 day period of UA, missing the movement of your ship, and wrongful possession of drug paraphernalia, specifically, a homemade crack pipe. 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 30 August 1996 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 your desire to upgrade your discharge and assertion that you were to be medically discharged due to a disability. 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 an NJP 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 Navy when your request for discharge was granted and you should not be permitted to change it now. Finally, regarding your assertion of being medically discharged, applicable directives state that even if a Sailor is processed for separation by reason of a medical or mental condition, if the Sailor meets the requirements of another reason for separation, such as misconduct, the Sailor will be separated for the latter reason. In this regard, you requested separation because of your misconduct. 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