



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

TJR
Docket No: 3660-11
29 June 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 28 June 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. In addition, the Board considered the Naval Discharge Review Board (NDRB) decisional documents, MD07-01266/HER dated 22 October 2008 and MD00-00210 dated 31 August 2000, copies of which are enclosed.

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. In this regard, the Board substantially concurred with the NDRB decisional documents.

In April 1994 you reported your medical history in pre-enlistment documents in general terms. In this regard, you stated that at age 14 you were a patient in an adolescent psychiatric ward for about two months, and at the age of 16 you had seen a psychiatrist on a weekly basis from September 1990 to August 1992. However, you further reported being in good health and not taking any medication. During the medical examination you reported not having any clinical problems or conditions which also included psychiatric conditions.

You enlisted in the Marine Corps Reserve on 27 June 1995 at age 19 and began a period of active duty on 5 July 1995. You served for about three months without disciplinary infraction; however, on 22 October 1995, you failed to return to duty following a

period of liberty. During this period of unauthorized absence (UA) you checked yourself into a hospital for evaluation due to your suicidal tendencies. This 36 day period of UA was terminated on 16 November 1995.

During the period from 4 to 21 December 1995, after undergoing a psychiatric evaluation, you were diagnosed with a schizotypal personality disorder. At that time you were strongly recommended for an administrative separation. The psychiatric report noted, in part, that you were expected to decompensate, threaten suicide, and become uncooperative. However, 10 days before administrative processing procedures were started, on 1 January 1996, you began another period of UA. During this period of UA you were declared a deserter. On 24 April 1996 you surrendered to military authorities, thus terminating the 114 day period of UA. Shortly thereafter, on 27 April 1996, you received emergency mental care and treatment for expressing suicidal ideation, although without a plan.

In May 1996, during a medical evaluation, you again reported your medical history, but in greater detail and presumably inclusive of all of your medical and mental examinations. In other words, in April 1994 you failed to report the extent of your being hospitalized for psychiatric problems, specifically, paranoia and suicidal tendencies. You also denied (**responded "NO"**) ever being a patient in any type of hospital and consulting or being treated by clinics, physicians, healers, or other practitioners within the past five years (1989 to 1994).

On 17 May 1996 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the two foregoing periods of UA totalling 150 days. 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 11 June 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. It also considered your assertion that you should not have been allowed to enlist because of your mental health problems, specifically, a schizotypal personality disorder. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your

discharge because of the seriousness of your repeated and lengthy periods of UA from the Marine Corps during such a short term of service, and which also resulted in your request for discharge. The Board believed that had you not began your second period of UA for 114 days, you could have presumably been processed for separation based on the recommendation from medical authorities regarding your mental condition and your misconduct of 36 days of UA. Although the recommendation of medical authorities is not binding on the command, an administrative discharge board (ADB) recommendation for a more favorable characterization of service is binding. However, your absence negated both the medical recommendation and the possibility to present your case to an ADB. Nonetheless, the Board concluded that your request for separation because of your misconduct and not for medical reasons was proper and procedurally correct. Further, in regard to your assertion, the Board believed that had you disclosed, in detail, your mental and medical history, a fraudulent entry would not have occurred. Finally, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. In this regard, 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

Enclosures