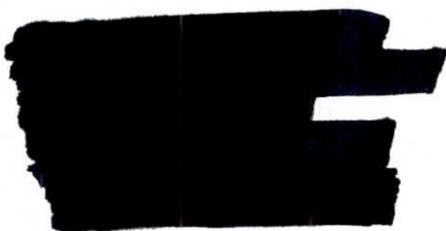




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 4042-11/
[12373-09]
22 April 2011



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, reconsidered your application on 20 April 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 reconsidered 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.

Your record reflects that on 14 January 1975, at the age 19, you enlisted in the Marine Corps. It also reflects that you served for about six months without disciplinary incident. However, during the period from 13 June to 24 October 1975, you received nonjudicial punishment (NJP) on three occasions for wrongful possession of marijuana, absence from your appointed place of duty, leaving your post without proper relief, and 13 specifications of failure to sign your restriction papers.

On 29 January 1976 you were counselled regarding your involvement of a discreditable nature with military authorities and nonrecommendation for promotion. About five months later, on 10 June 1976, you received NJP for disobedience, failure to obey a lawful order, and drinking alcoholic beverages in the barracks.

During the period from 19 July to 29 October 1976, you were counselled on five more occasions regarding your ineligibility for promotion due to receiving NJP, nonrecommendation for promotion, excessive involvement of a discreditable nature with military authorities, substandard conduct and performance of duty, and poor personal appearance. On 4 November 1976 you received NJP for failure to go to your appointed place of duty. The next day you were counselled because you were suspected of using dangerous drugs. At that time you were warned that possession of drug paraphernalia could result in an administrative separation.

On 11 January 1977 you received NJP for absence from your appointed place of duty and two specifications of failure to obey a lawful order. Shortly thereafter, on 26 April 1977, you received your seventh NJP for absence from your appointed place of duty. Subsequently, on 28 April 1977, you were notified that administrative separation action had been initiated and that you were recommended for a less than honorable characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). Prior to the convening of your ADB, you received NJP on 2 May and again on 7 June 1977, for absence from your appointed place of duty and destruction of government property valued at \$50.

On 8 July 1977 an ADB recommended discharge under honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 16 August 1977, your commanding officer, in concurrence with the findings and recommendation of the ADB, also recommended discharge under honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 15 September 1977 the Staff Judge Advocate (SJA) reviewed the facts of your case, determined that the separation procedures were proper and legal, and recommended to the discharge authority that the recommendations for a general discharge by reason of misconduct be approved. On 19 September 1977 the discharge authority approved the foregoing recommendations and directed your commanding officer to discharge you under honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities, and on 7 October 1977, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge and change the narrative reason for separation to reflect that you were separated for medical reasons. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge or a change of the narrative reason for separation because of the seriousness of your repeated and frequent misconduct which resulted in nine NJPs, counselling on several occasions for involvement of a discreditable nature, nonrecommendation for promotion, substandard performance, and misconduct that included drug abuse.

The Board further considered your assertion that since your separation was inappropriately directed by someone that was not in your chain of command, your discharge should be voided. In this regard, the Board concluded that the appropriate procedures were adhered to when processing you for separation. In other words, your recommendations for discharge were processed via your chain of command to the SJA, who forwarded the recommendations to the proper discharge authority.

The Board noted that there is no medical evidence in the record to support your assertion that you should have been discharged for medical reasons, and you submitted none, to warrant a change of your narrative reason for separation. Further, even if you had been processed for separation for dual reasons (i.e., misconduct and medical reasons), regulatory guidelines authorize separation by reason of misconduct to take precedence over all other reasons. In this regard, Sailors separated by reason of misconduct normally receive discharges under other than honorable conditions. As such, the Board concluded that, with your extensive record of misconduct, you were fortunate to have received a general discharge. Finally, the Board concluded that there was more than sufficient evidence in the record to support your separation by reason of misconduct, and as such, your application has been denied.

The Board believes that under current regulations you may be eligible for veterans' benefits. However, whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA), and you should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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