



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TJR
Docket No: 4674-11
10 February 2012

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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 7 February 2012. 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 Reserve on 25 September 1990 at age 18 and began a period of active duty. About nine months later, you were referred for a medical evaluation due to your longstanding problems with anger, conflicts with authority figures, and antisocial behavior. You were diagnosed with a personality disorder with narcissistic features and recommended for an administrative separation if your problems continued.

You served without disciplinary incident until 7 November 1991, when you received nonjudicial punishment (NJP) for wrongful use of marijuana on about three occasions. The punishment imposed was a \$754 forfeiture of pay, restriction and extra duty for 45 days, and reduction to paygrade E-1. Subsequently, on 13 November 1991, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 16 December 1991 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due

to drug abuse. On 18 December 1991 the discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct and on 26 December 1991 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. It also considered your assertion that you never used drugs and only pled guilty to the charges of drug use as a means of being released early from the Navy since you believed that you were not defending your country. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your drug related misconduct which was contrary to the Navy's "zero tolerance" policy. Also, you were given an opportunity to defend your actions, but waived your procedural right to present your case to an ADB. Further, there is evidence in the record that is contrary to your assertion of never using drugs. Finally, it is well settled in the law that if a Sailor procures a discharge by fraud/lying, he/she should not benefit from the fraud when it is discovered. With that being said, if you lied to get out of the Navy as you assert, no corrective action would be appropriate. 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