



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

ELP
Docket No. 2681-01
20 August 2001

[REDACTED]

Dear N [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 Navy Records, sitting in executive session, considered your application on 15 August 2001. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Naval Reserve on 19 April 1982 for six years at age 19. At that time, you were granted an enlistment waiver for pre-service use of marijuana. You were ordered to active duty on 27 April 1982 for a period of 36 months in the Active Mariner Program. During the first week of recruit training, you were advised of the Navy's drug policy and of the adverse consequences that could be expected if you abused illegal drugs. You were meritoriously advanced to FA (E-2) upon completion of recruit training, graduated from BT "A" School, and were assigned to the fleet.

You served without incident until 28 April 1983 when you were advised that a probable cause urinalysis had tested positive for marijuana. You were counseled and warned that further drug abuse could result in discharge under other than honorable conditions.

On 11 May 1983 you received nonjudicial punishment (NJP) for possession and introduction of the marijuana. Punishment

consisted of a reduction in rate to BTFR (E-1), a forfeiture of \$214, and 45 days of restriction and extra duty.

You were again advanced to BTFA on 11 November 1983. On 28 November 1983 you were referred for a dependency evaluation. A medical officer found you were not dependent, had good potential, and recommended that you be referred to the counseling and assistance center.

On 22 April 1984 you received a second NJP for use of marijuana. Punishment imposed consisted of a reduction in rate to BTFR, forfeitures of \$298 per month for two months, and 45 days of restriction and extra duty. On 3 May 1984 a medical officer found that you were psychologically dependent on marijuana and had no potential for further service..

On 1 June 1984 you were notified that discharge under other than honorable conditions was being considered by reason of misconduct due to drug abuse. You were advised of your procedural rights, declined to consult with legal counsel or submit a statement in your own behalf, and waived the right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. The Commander, Naval Military Personnel Command approved the recommendation and directed discharge under other than honorable conditions. On 8 August 1984, you declined inpatient treatment at a Veterans Administration (VA) rehabilitation facility. You were discharged under other than honorable conditions on 10 August 1984.

On 5 November 1987 the Naval Discharge Review Board denied your request for an upgrade of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been 17 years since you were discharged. The Board noted your contention that you had an outstanding work ethic and put great effort toward your position as a boiler technician, and the use of drugs never affected your work. The Board concluded that these factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs for drugs. The Board noted that you were well aware of the Navy's drug policy and the adverse consequences that would result if you violated that policy. The Board also noted the aggravating factor that you waived the right to present your case to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. You also declined the opportunity for inpatient rehabilitation treatment via a VA facility prior to discharge. It appeared to the Board that because of your otherwise excellent

performance, the command treated you more favorably than most other individuals who used drugs. After the first drug incident, you were counseled and warned. The second incident resulted in NJP. It was only after you failed to learn from your first disciplinary experience and continued your willful disregard for the Navy's drug policy, that you received a second NJP and the command processed you for discharge. The Board concluded that the discharge was proper and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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