



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

ELP
Docket No. 3862-01
19 October 2001

[REDACTED]

Dear [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 17 October 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 Marine Corps Reserve on 31 May 1991 for eight years at age 18. The enlistment documents show that you admitted to a one-time pre-service experimentation with marijuana. You were also briefed regarding the Marine Corps policy concerning illegal use of drugs and the consequences of using such drugs.

The record reflects that you were advanced to PFC (E-2) and were ordered to initial active duty for training on 21 January 1992. You were honorably released from active duty on 24 July 1992 and transferred to the Marine Corps Reserve. You were subsequently advanced to LCPL (E-3) and served without incident until 3 August 1993 when a Navy drug laboratory reported that a urine sample you submitted on 11 July 1993 had tested positive for marijuana.

On 15 August 1993 you were notified that action was being initiated to discharge you for misconduct due to drug abuse.

You were advised of your procedural rights, that the characterization of service could be under other than honorable conditions, and that the commanding general would make the determination on characterization. The commanding officer (CO) stated that he was recommending a general discharge under other than honorable conditions. You 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).

On 25 September 1993 the CO recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. In his recommendation, the CO stated your confirmed use of illegal narcotics typified your attitude for Marine Corps regulations and that you had no potential for further military service. Thereafter, the battalion commander concurred with the recommendation and a staff judge advocate found the discharge documentation to be sufficient in law and fact. On 28 October 1993, the discharge authority directed an other than honorable discharge by reason of misconduct due to drug abuse. You were so discharged on 8 November 1993.

On 16 June 1997 the Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge. The NDRB summary noted that you had entered a rehabilitation program on two occasions after your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, regret for your actions that led to your discharge, and the fact that it has been 11 years since you were discharged. The Board noted the issues you presented to the NDRB in May 1997. The Board also noted that when the CO notified you were being processed for discharge, he stated that it was his intent to recommend a general discharge under other than honorable conditions. However, there is no such characterization and he subsequently recommended to the discharge authority that you be separated under other than honorable conditions. The Board further noted at the time of your enlistment you were briefed on the Marine Corps drug policy and the consequences of using of illegal drugs. The fact that the consequences of your misconduct now impact on future endeavors provides no valid basis for recharacterization of service. While you contend you put yourself through school and have a successful employment record, you provide no corroborating evidence to support these contentions; or any evidence of your contributions to your community or of how long you have been drug free. Your use of drugs, knowing the consequences of such actions, constitutes a willful disregard for the Marine Corp's zero tolerance policy and

does warrant recharacterization to honorable or under honorable conditions. The Board thus 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