



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

ELP
Docket No. 5830-01
14 December 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 12 December 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 Navy on 25 September 1981 for four years at age 18. The record reflects that you were advanced to SM2 (E-5) and served without incident until 6 April 1984 when you received nonjudicial punishment (NJP) for wrongful possession of a cartridge flare and use of marijuana. Punishment consisted of forfeitures of \$389 per month for two months, reduction in rate to SM3 (E-4), and 45 days of restriction and extra duty. Thereafter, you were formally counseled regarding your use of marijuana and warned that failure to take corrective action could result in administrative discharge. A medical evaluation found that you were a drug abuser, but not drug dependent.

On 18 June 1984 you were placed in an outpatient level I rehabilitation program which included weekly counseling, alcohol and drug abuse classes, and weekly urinalysis testing. On 27 July 1984 you tested positive for marijuana on a rehabilitation/aftercare urinalysis. After a comprehensive review of

your record, the command made a determination to retain you and furnish further rehabilitation. On 5 October 1984, the counseling and assistance center determined that you were still not drug dependent and scheduled you for a four week outpatient course, beginning in March 1985. However, on 21 December 1984, you tested positive again for marijuana use on an aftercare urinalysis.

On 4 February 1985 you were notified that discharge under other than honorable conditions was being initiated by reason of misconduct due to drug abuse as evidenced by three incidents of drug use in nine months and drug abuse rehabilitation failure as evidenced by two drug incidents while in a rehabilitation program. You were advised of your procedural rights, and after consulting with legal counsel, elected to submit a statement in your own behalf but waived the right to present your case to an administrative discharge board (ADB). In your statement, you opined that your professional performance rated a discharge higher than under other than honorable conditions. You cited your record of performance which included a meritorious advancement and a promotion under the command advancement program, a letter of appreciation for outstanding performance, and superior performance during a ship's exercise and as divisional leading petty officer.

On 13 February 1985 the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. He noted that although your performance was excellent, your statement did not discuss your drug use or whether you intended to stop using marijuana in conformance with the Navy's zero tolerance policy.

The record reflects two periods of unauthorized absence (UA) from 14-15 February and 21-28 February 1985, for which you received no disciplinary action. While you were UA, the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 8 March 1985.

On 25 January 1999, the Naval Discharge Review Board (NDRB) 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, the more than two years of unblemished service in which you were promoted to SM2, the issues you presented to the NDRB, and the fact that it has been more than 15 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your use of drugs for which you received an NJP. You received significant consideration when the command elected to

retain you. However, you failed to learn from the NJP and did not heed the warning that further drug abuse could result in administrative discharge. Your continued use of marijuana demonstrated a willful disregard of the Navy's zero tolerance policy and set a poor example for your subordinates and peers. The Board also noted the aggravating factor that you waived an ADB the one opportunity you had to show why you should be retained or discharged under honorable conditions. 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