



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

RDZ:ecb
Docket No. 06557-11
9 November 2011

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 1 November 2011. 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 at age 20 on 11 April 1995 for a term of four years. During your initial military training you were fully briefed on the Marine Corps' zero tolerance drug policy the violation of which would subject a Marine to disciplinary proceedings and or administrative separation with an other than honorable discharge (OTH). On 27 January 1997 you admitted to Marine Corps officials that you had used marijuana. You were taken to nonjudicial punishment (NJP) four days later and again admitted to using marijuana. Having been found guilty you were awarded forfeiture of pay, restriction and extra duties. Your record shows that you did not file an appeal. Following NJP you were informed that you being recommended for discharge with an OTH. You then waived your right

to an administrative discharge where with the assistance of a military lawyer you could have requested retention or a better discharge. Several days later you approached your company commander and spontaneously stated that you had used marijuana on more than one occasion. Accordingly you were issued an OTH on 21 March 1997 after having served less than two years of your four year military obligation.

In September of 1999 you applied to the Navy Discharge Review Board (NDRB) asking that your discharge be upgraded so that you could receive medical benefits from the Department of Veterans Affairs (VA). In support of your case you admitted using marijuana but claimed you had used it only once. Your claim of one time usage was in direct conflict with the entry in your Marine Corps record dated 3 February 1997 showing that you spontaneously told your company commander that you had used marijuana on more than one occasion. You also asserted that the only reason you reported your use of marijuana was to get the proper help and counseling to deal with your problem. That argument also conflicted with information contained in your record. Specifically the entry of 27 January 1997 showed that even after you were informed that your refusal to be evaluated by a medical officer would render you ineligible for drug treatment at a VA medical facility you persisted in your refusal to be evaluated. Finally you asserted that your discharge processing was done too hastily which ignored the fact that by failing to file an appeal to your NJP and by waiving your right to an administrative discharge board you ensured that your case would be handled quickly. On 25 May 2000 NDRB denied your request. A copy of NDRB's decision is attached. After a careful review of these proceedings this Board concurs with findings and conclusions set out in the NDRB decision.

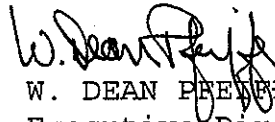
Having failed to obtain relief from NDRB you have applied to this Board and in a complete reversal of the position you took in your NDRB appeal you now claim that you never used marijuana and that your repeated false statements to Marine Corps officials regarding your drug usage were caused by your desire to be discharged as soon as possible so you could return home to be with your fiancée who had suffered a miscarriage. Even if this Board were to assume that you are at long last telling the truth, an assumption which in the Board's view is not supported in any meaningful way by the evidence now before it, it could not grant your request. If you are now telling the truth this means you obtained your early release from the Marine Corps through fraud and one of the most basic principles of the law of equity is that when an individual perpetrates a fraud he or she should not be allowed to profit from it. And that is exactly what this Board would be doing if it granted you relief based on the grounds you now offer. Simply put, your misconduct whether it be drug abuse or fraud

is serious and clearly justifies the characterization of your military service as other than honorable.

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