



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

TJR
Docket No: 11683-10
25 August 2011

[REDACTED]

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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 23 August 2011. 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 Marine Corps on 3 March 1976 at age 17 and served for a year without disciplinary incident, but on 15 April 1977, you were convicted by summary court-martial (SCM) of wrongful possession of marijuana.


Your record reflects that on 22 June 1978 you were the subject of an investigation and subsequent disciplinary action because of your wrongful possession of phencyclidine (PCP) and lysergic acid diethylamide (LSD). It further reflects that on 19 September 1978 you began a period of unauthorized absence (UA) that was not terminated until you were apprehended and held in confinement by civil authorities on 3 October 1979. Shortly thereafter, on 22 October 1979, you were convicted by civil authorities of conspiracy to possess and distribution LSD. You were sentenced to confinement for four years, probation for five years, and to pay \$56 in court cost. A portion of the confinement was suspended and you were returned to military custody. As a result of your misconduct, the foregoing offenses, specifically wrongful possession of PCP and LSD, and a 389 day period of UA, were

referred for trial. However, the record does not reflect the disciplinary action taken, if any, for this misconduct. Nonetheless, on 16 November 1979, you were notified of pending administrative separation action by reason of misconduct due to civil conviction. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 27 November 1979 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to civil conviction. On 28 December 1979 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to civil conviction, and on 10 January 1980 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 so that you may obtain veterans' benefits and medical care. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your drug related misconduct in both the military and civilian communities and your lengthy period of UA from the Marine Corps. Finally, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. 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