



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 4724-99

8 October 1999

[REDACTED]

Dear [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 5 October 1999. 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.

The Board found that you enlisted in the Delayed Entry Program (DEP) of the Naval Reserve on 30 September 1998 at age 18 and enlisted in the Navy on 17 November 1998. While in recruit training you admitted to using cocaine 15 times during the period from December 1995 to October 1998 and using LSD during the period from July 1996 to September 1997.

Since this drug use made you ineligible for enlistment, you were processed for an administrative separation. In connection with this processing you elected to waive your procedural rights. Subsequently, the separation authority directed an entry level separation by reason of erroneous enlistment. You were so separated on 9 December 1998. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

You state in your application that you became scared during recruit training and lied about your drug abuse so that you would be separated. You have submitted character references attesting to the fact that you are a good and reliable worker and a good citizen. You desire to serve in the Army and regret lying to get out of the Navy.

In reaching its decision, the Board noted that it is well settled in the law that an individual who commits a fraud in order to get out of the military should not benefit from that fraud when it is discovered. Further, the Board could not tell if you were lying then or are lying now.

Regulations require the assignment of an RE-4 reenlistment code when an individual is separated by reason of erroneous enlistment due to preservice drug abuse, and such a code is also assigned if an individual is separated because he could not adapt to recruit training for any reason. The Board believed that even if its conceded that you are not a drug user, your admission of fraud was sufficient to support the assignment of the RE-4 reenlistment code.

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