



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

ELP
Docket No. 4998-99
18 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, 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 14 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 Navy on 10 April 1987 for four years at the age of 21. Enlistment processing documentation on file shows that you signed a "Drug and Alcohol Abuse Statement of Understanding" which specifically advised you that illicit drug use could result in an administrative discharge under other than honorable conditions. During enlistment processing you disclosed that you had been charged with assault and three instances of possession of marijuana.

The record reflects that you were advanced to SK3 (E-4) and served for more than 30 months without incident. However, during the four month period from October 1989 to January 1990 you received two nonjudicial punishments (NJP) for missing ship's movement and communicating a threat. As a result of the second NJP, you received a suspended reduction in rate which was vacated on 17 January 1990. You continued to serve without incident during the following year, were advanced again to SK3, and

voluntarily extended your enlistment for 25 months on 7 March 1991.

On 11 February 1992, you received your third NJP for stealing five diving trunks, eight ball caps, and six "D" size batteries. Punishment imposed consisted of a forfeiture of \$200 and reduction in rate to SKSN (E-3) which was suspended for a period of six months.

On 29 July 1992, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense as evidenced by the three NJPs during current enlistment. You were advised of your procedural rights and elected representation by counsel and presentation of your case to an administrative discharge board (ADB).

On 20 August 1992, you appeared before an ADB with counsel. The ADB unanimously found that you had committed misconduct due to commission of a serious offense and, by a 2 to 1 vote, recommended separation under honorable conditions. The dissenting member recommended that the discharge be suspended. Thereafter, the commanding officer recommended that the findings and recommendation of the ADB be upheld. On 28 September 1992, the Chief of Naval Personnel (CNP) directed separation under honorable conditions by reason of misconduct.

However, on 7 October 1992, a Navy drug laboratory reported that a urine sample you provided on 28 September 1992 had tested positive for marijuana. On 9 October 1992 you received a fourth NJP for use of marijuana. Punishment consisted of reduction in rate to SKSN, forfeitures of \$681 per month for two months, and 60 days of restriction. On the same day, the command received verbal authority from CNP to cancel its earlier authorization to discharge you and to reprocess you for separation in view of the positive urinalysis. Thereafter, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse. You were advised of your procedural rights, declined to consult with counsel, and waived your rights. You did not object to the discharge and acknowledged that a discharge under other than honorable conditions would deprive you of virtually all veterans' benefits. On 16 October 1992 CNP directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 20 October 1992.

On 16 August 1996 the Navy Discharge Review Board (NDRB) denied your request for an upgrade of your discharge.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted the letters of reference, letters of appreciation and citations for professional achievement while on active duty, and the issues you presented to the NDRB. The Board specifically noted your contention that you were assured that your DD Form 214 and discharge would be upgraded within 90 days of your separation.

The Board concluded that the foregoing contention and letters were insufficient to warrant recharacterization of your discharge given your record of four NJPs, all of which were serious offenses under the Uniform Code of Military Justice. The Board noted that discharge under honorable conditions had been authorized prior to your fourth NJP for use of marijuana. This additional misconduct justified the cancellation of that authorization. The Board noted the aggravating factor that you waived your right to a second ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your contention that your discharge was to be automatically upgraded is without merit. There are no provisions for an automatic upgrade and even if you were told there were, that does not provide a valid basis for recharacterizing service. 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