



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1627-99

10 September 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 9 September 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 Marine Corps on 1 May 1981 at age 18. At that time you had served in the Marine Corps Reserve for about seven months. The record shows that you received nonjudicial punishment on three occasions. Your offenses were an unauthorized absence of about one day, disobedience and use of marijuana. In addition, it appears that you were convicted by civil authorities of a "hit and run" offense.

Based on the foregoing record of misconduct, you were processed for an administrative discharge. The complete discharge processing documentation is not in the record, but the record indicates that you waived your right to have your case heard by an administrative discharge board (ADB). On 10 May 1983, the discharge authority approved the recommendation of your commanding officer that you be discharged for misconduct with a discharge under other than honorable conditions. You were so discharged on 20 May 1983. Your DD Form 214 contains the separation code of HKA1, which means that you waived an ADB.

In its review of your application the Board carefully weighed all

potentially mitigating factors, such as your youth and prior service in the Marine Corps Reserve. The Board also considered your contention that you did not use marijuana and must have tested positive due to inhalation of second hand marijuana smoke. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your use of marijuana. The Board was aware of your contention, but noted that it was unsupported by any evidence in the record, and you have submitted no such evidence. Further, the Board was aware that the cut off level for a positive urinalysis has been set at a sufficiently high level to preclude a positive result based on inhalation of second hand marijuana smoke. The Board concluded that the discharge was proper as issued 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