



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

TRG
Docket No: 1875-07
30 April 2008



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 29 April 2008. 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 Navy on 30 July 1965 at age 17. During the period from 7 April 1966 to 11 January 1968, you were convicted by three special courts-martial and received two nonjudicial punishments. Your offenses were seven periods of unauthorized absence totaling about 108 days, missing movement, escape from confinement, breaking restriction and possession of another Sailor's identification card. The punishment of the second special court-martial included a bad conduct discharge which was suspended on six months probation. After you escaped from confinement, you were convicted by the third special court-martial of that offense and were sentenced to another bad conduct discharge. There is another seven day period of unauthorized absence in the record for which you apparently did not receive any disciplinary action. You received the bad conduct discharge on 4 March 1968.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and contention that your misbehavior was caused by your anger at your father for making you enlist. You state, in effect, that you have turned your life around and are trying to live a good life. The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your multiple

action in the record. However, on 21 December 1971 you escaped from a correctional facility and were later declared a deserter. Thirty-one days later, you were apprehended.

Your military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for escape, the 31 day period of unauthorized absence, communicating a threat and several other offenses. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 14 March 1972 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the undesirable discharge on 22 March 1972.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your two tours in Vietnam and participation in numerous combat operations. The Board also considered your contention that you have suffered from mental problems since your service in Vietnam. However, there is no evidence in the record and you have submitted none to show that you have a mental illness caused by such service.

The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your 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.

The Board believes that you may be eligible for at least some veterans' benefits based on your unchanged record. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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,

A handwritten signature in cursive script, appearing to read "Robert D. Zsalmán".

ROBERT D. ZSALMAN
Acting Executive Director