



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

SMS
Docket No: 4716-08
12 February 2009

[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 11 February 2009. 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.

On 23 August 1976, you enlisted in the Marine Corps at age 18. During the period 17 January to 24 February 1977, you had nonjudicial punishment (NJP) on two occasions and suspended punishment from one of your NJP's was vacated. Your offenses included two instances of unauthorized absence totaling about 33 days. On 10 April 1978, you requested an undesirable discharge (UD) for the good of the service to avoid trial by court-martial, but your request was denied, and you were convicted by a special court-martial on 21 April 1978, of willful disobedience of a lawful order, attempted larceny, larceny, two instances of unlawful entry into the cubicle of another Marine with the intent to commit a criminal offense, and communicating a threat. Your sentence included confinement at hard labor, reduction in rank, and a bad conduct discharge (BCD). On 21 June 1978, you had NJP for your dishonorable

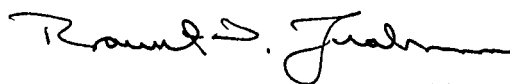
failure to pay a debt and disrespect. On 18 September 1978, a medical evaluation found that you were not psychotic. You subsequently waived the right to request restoration to duty. After clemency was denied and the BCD was approved at all levels of review, on 3 December 1979, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth and desire for a better discharge. The Board also considered your contention that your mental health may have contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your service due to the seriousness of your misconduct. Regarding your contention, there is no evidence in the record to support it. But even if there were such evidence, it would not excuse your misconduct. Therefore, 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.

Regarding your request for assistance, you should contact the nearest office of the Department of Veterans Affairs if you desire clarification about your eligibility for benefits.

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,



ROBERT D. ZSALMAN
Acting Executive Director