



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

SJN
Docket No: 03323-09
25 February 2010

[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 23 February 2010. 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.

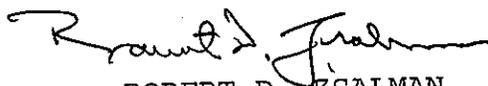
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy and began a period of active duty on 7 June 1976 at age 18. On 3 November 1977 and 12 June 1978, you received nonjudicial punishment (NJP) for three days of unauthorized absence (UA), six instances of absence from your appointed place of duty, and two instances of disobedience. On 19 March 1979 you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for seven specifications of UA totaling 144 days, and two specifications of failure to go to your appointed place of duty. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and on 20 April 1979, you received an other than honorable discharge for the good of the service in lieu of trial by court-martial. 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.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and belief that your characterization of service should be upgraded because of a Department of Veterans Affairs (DVA) determination that your service was under honorable conditions. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your misconduct that resulted in two NJP's, charges being preferred to a court-martial for periods of UA totaling over four months and absence from your appointed place of duty, and your request for discharge. 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 with the Navy when your request for discharge was granted and should not be permitted to change it now. Finally, even though the Board of Veterans' Appeals determined that your service was performed under honorable conditions in order to establish your entitlement to veterans benefits, such a determination does not, in and of itself, require that your other than honorable discharge be upgraded. 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,



ROBERT D. ZSALMAN
Acting Executive Director