



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TJR
Docket No: 6328-13/
6708-95
25 November 2014

5 U.S.C. 552(b) (6)

Dear 5 U.S.C.

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 25 November 2014. The names and votes of the members of the panel will be furnished upon request. 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 Marine Corps on 11 July 1977 at the age of 18 and immediately began a period of active duty. You served for nearly a year without disciplinary infractions, but during the period from 26 July to 17 August 1978, you were in an unauthorized absence (UA) status on two occasions, had escaped military custody, and were apprehended by civil authorities.

As a result of the foregoing periods of UA totalling 52 days, on 21 September 1978, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial. 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. Subsequently, your request was

granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 10 October 1978, you were issued an other than honorable discharge.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge, post service conduct which includes a civil conviction in July 1979 for attempted safe breaking and breaking and entering. It also considered your post medical and mental histories of psychology consultations, health assessments, and therapist evaluations for a head injury in 1993 while in custody of civil authorities and drug abuse, expected symptoms of post-traumatic stress disorder, major depressive disorder, mild retardation, high blood pressure, and traumatic brain injury during the period from 1996 to 2013.

The Board concluded the foregoing factors were not sufficient to warrant relief in your case because of the seriousness of your periods of UA which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Finally, the Board determined that your post service conduct and post medical and mental histories were not enough to outweigh the significant misconduct you committed. Accordingly, your application has been denied.

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 within one year from the date of the Board's decision. 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,

5 U.S.C. 552(b) (6)

ROBERT J. O'NEILL
Executive Director