



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

TAL
Docket No: 3842-13
19 March 2014

[REDACTED]

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 12 March 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.

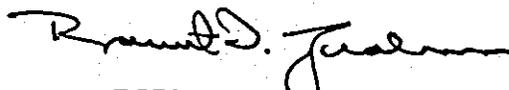
You enlisted in the Navy and began a period of active duty on 5 October 1976 at age 17. You received nonjudicial punishment (NJP) on four occasions from 25 April 1978 through 17 August 1979, for three periods of unauthorized absence (UA) from your unit for a period totaling 169 days, 13 instances of failure to go to your appointed place of duty, breaking restriction, wrongful possession of another's Armed Forces identification card, and making a false official statement. On 14 September 1979, you were in a UA status from your unit until 4 January 1980, a period of 107 days, and missing ship's movement. Based on the information currently contained in your record it appears that you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for the UA period and missing ship's movement. Prior to submitting this

request you would have 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. On 5 June and 14 August 1980, you received NJP for wrongful possession of marijuana, possession of an unauthorized liberty pass and four instances of UA from your unit for a period totaling 36 days. On 18 August 1980, your request was granted and you were separated with an OTH discharge. 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 entire record and application carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in six NJPs, periods of UA totaling over ten months and 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. The Board 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, there is no provision of law or in Navy regulations that allows for recharacterization of service due solely to the passage of time. 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