



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

TJR  
Docket No: 5120-13  
30 April 2014



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 23 April 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 1 October 1968 and immediately began a period of active duty. You served for about 10 months without disciplinary incident. However, during the period from 4 August 1969 to 20 January 1970, you received nonjudicial punishment (NJP) on three occasions for two periods of absence from your appointed place of duty, wearing improper civilian attire, disorderly conduct, two specifications of disobedience, failure to obey a lawful order, and two periods of unauthorized absence (UA) totalling nine days.

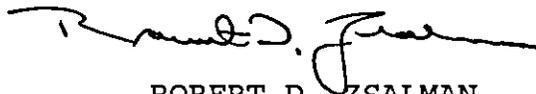
During the period from 20 January to 19 March 1970 you were again in a UA status on two occasions for 38 days and broke restriction on both occasions. As a result, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial. Prior to submitting this 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 17 April 1970 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 and assertions of being denied an overseas assignment, going UA because your girlfriend attempted suicide, and being told that your discharge would be upgraded six months after your separation. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct, which resulted in three NJPs and repetitive 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. 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. Further, there is no evidence in the record, and you submitted none, to support your assertions. Finally, no discharge is automatically upgraded due solely to the passage of time. 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. 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