



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

TAL
Docket No: 5394-13
21 May 2014



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 14 May 2014. 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.

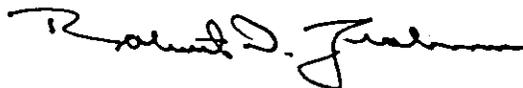
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps and began a period of active duty on 31 January 1968 at age 17. On 21 December 1970, you received nonjudicial punishment (NJP) for two instances of failure to obey lawful regulations. On 1 March 1971, you were in an unauthorized absences status from your unit until you were apprehended by civil authorities in Greenville, North Carolina, a period of 274 days. On 28 January 1972, you were convicted in Pitt County Superior court of wrongful possession of hashish and marijuana. The sentence imposed was three to five years confinement. You were notified of pending administrative discharge processing with an other than honorable (OTH) discharge due to misconduct (civil conviction). You waived all of your procedural rights, including your right to an administrative discharge board (ADB). On 1 June 1972, you received the OTH discharge for misconduct (civil conviction).

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record and Vietnam service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in an NJP and a civil conviction. A member of the armed services who is convicted by civil authorities may be discharged for misconduct. The Board noted that you waived your right to an ADB, your best opportunity for retention or a better characterization of service. Finally, there is no provision of law or in Marine Corps 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