



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

TAL
Docket No: 5894-13
12 June 2014

[REDACTED]

[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 4 June 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 and began a period of active duty on 26 July 1966 at age 18. You received nonjudicial punishment on four occasions for two instances of unauthorized absence from your unit totaling two days, and drunk and disorderly conduct. From 22 July 1969 through 16 September 1970, you were UA from your unit on five occasions totaling a period of 320 days. You made a written request for discharge for the good of service to avoid trial by court-martial for the forgoing periods of UA. 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. Your request was granted and the commanding officer directed your other than honorable (OTH) discharge. As a result of this action, you were

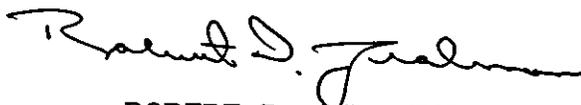
spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 4 November 1970, you were discharged under OTH conditions in absentia. On 19 January 1977 you were granted an unconditional pardon and clemency discharge by Presidential Proclamation 4313 of 23 August 1975.

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 four NJPs, 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. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board noted that the Presidential Clemency Board issued you a clemency discharge according to Presidential Proclamation 4313. However, this recharacterization does not entitle you to benefits administered by the Department of Veterans Affairs (DVA). The Board concluded that a further change, which would make you eligible for DVA benefits, was not warranted.

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