



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001

TAL
Docket No: 8164-13
12 September 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 September 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 28 February 1975 at age 17. On 7 June 1976, you received nonjudicial punishment (NJP) for unauthorized absence (UA) from your unit for one day and failure to obey a lawful order from a superior commissioned officer. On 30 August 1976, you were convicted by summary court-martial of two instances of UA from your unit for a period totaling 14 days and missing ship's movement. On 27 January and 11 February 1977, you received NJP for three instances of UA from your unit totaling a period of nine days and failure to obey a lawful written

regulation. On 28 September 1977, you were convicted by special court-martial (SPCM) of UA from your unit for two periods totaling 43 days. The sentence imposed was confinement at hard labor and a forfeiture of pay. On 20 March 1978, you were again convicted by SPCM of UA from your unit for a period of 27 days and failure to go to your appointed place of duty. On 30 June and 11 July 1978, you received NJP for two instances of UA from your unit for a period totaling six days. On 24 July 1978, you were UA from your unit until 23 January 1979, a period of 183 days. On 24 January 1979, you were again UA from your unit until 12 October 1979, a period of 261 days. On 24 October 1979 you submitted a request for an other than honorable (OTH) discharge to avoid trial by court-martial for the foregoing 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 separation authority directed your 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 1 November 1979, you were discharged under OTH conditions.

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 and repetitiveness of your misconduct that resulted in five NJPs, an SCM, two SPCMs, periods of UA totaling over one year and five 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.

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,

A handwritten signature in cursive script, appearing to read "R. J. O'Neill".

ROBERT J. O'NEILL
Executive Director