



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

Docket No: 1156-14
24 March 2015

5 U.S.C 552(b) (6)

Dear 5 U.S.C 552(b) (6)

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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 March 2015. 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 8 May 2002. On 29 July 2008, you received nonjudicial punishment (NJP) for two instances of assault. You received a reduction in paygrade, restriction, extra duty, and a suspended forfeiture of pay. You remained on active duty until you were honorably transferred to the Temporarily Disability Retired List (TDRL) on 29 April 2009. On 29 April 2014, your name was removed from the TDRL and placed on the Permanent Disability Retired List (PDRL).

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to be restored to paygrade E-5, and assertion that your diagnosed post-traumatic stress disorder (PTSD) contributed to your misconduct while on active duty. Nevertheless, the Board concluded these factors were not sufficient to warrant restoring you to paygrade E-5.

Additionally, a report of inquiry into your mental capacity and mental responsibility conducted by medical personnel found, in part, that you had an average to above-average level of intelligence, had the mental capacity to understand the nature of proceedings and seriousness of the charges against you, and had the mental capacity to cooperate intelligently in your own defense. Regarding your assertion that you were suffering from PTSD when your misconduct occurred, the Board noted that the severity of your misconduct outweighed the mitigations of your diagnosed PTSD. 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 within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in your case. 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,

5 U.S.C 552(b) (6)

ROBERT J. O'NEILL
Executive Director