



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

TJR
Docket No: 11570-14
1 July 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, 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 30 June 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 Navy and began a period of active duty on 28 February 1977. During the period from 28 June 1977 to 13 August 1979, you received nonjudicial punishment (NJP) on four occasions and were twice convicted by summary court-martial (SCM). Your offenses were unspecified periods of unauthorized absence (UA), absence from your appointed place of duty, missing the movement of your ship, disrespect, failure to obey a lawful order, disobedience, misbehavior as a sentinel, assault, and malingering. Shortly after this period, on 24 September 1979, you began several other periods of UA with the last period being terminated on 19 August 1980.

As a result of the foregoing, on 2 July 1981, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for seven periods of UA totalling 501 days. 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 6 August 1981, 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 assertion of a diagnosed post-traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your repetitive misconduct and lengthy 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. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Regarding your assertion of suffering from PTSD, the Board noted that the severity of your misconduct outweighed the mitigations of your assertion of a post service assessment of 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 or other matter not previously considered by the Board within one year from the date of the Board's decision. 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