



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

TJR
Docket No: 11612-14
29 January 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 January 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 19 October 1972. You served satisfactorily for about a year and two months before beginning your first period of unauthorized absence (UA). On 18 March 1974, upon return from your second period of UA, you were referred to a medical evaluation. The medical record reflects that you were diagnosed with an immaturity personality and drug abuse as evidenced by your wrongful use of heroin, cocaine, amphetamines, marijuana, and lysergic acid diethylamide (LSD). On 4 August 1974, after slashing your arm, you were referred for a psychiatric evaluation and diagnosed with an immature and passive aggressive personality; and drug abuse as evidenced by your history of wrongful use of heroin, cocaine, amphetamines, marijuana, and LSD. Shortly thereafter, on 12 August 1974, you were convicted by civil authorities of driving without a valid license.

On 23 December 1974, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for five period of UA totalling 125 days, larceny of a \$50 pistol, conspiracy to commit larceny, theft of a belt and holster valued at \$3, \$350 from and fellow shipment, and government property valued at \$50, and failure to go to your appointed place

of duty. 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 10 January 1975, 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 misconduct, repetitive and lengthy periods of UA, and wrongful use of controlled substances, all of 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 post service medical 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