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

TAL
Docket No: 2404-14
10 April 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 10 April 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.

Your record reflects that on 20 April 1985, prior to your enlistment, you were arrested by military police for violating a Notice of Exclusion from the Naval Air Station (NAS), Brunswick, Maine.

You enlisted in the Navy and began a period of active duty on 14 November 1985. You served for four months without disciplinary incident, but on 18 March 1986, you received nonjudicial punishment (NJP) for failure to obey a lawful order. On 16 July 1986, you were notified of pending administrative discharge processing with a general characterization of service due to fraudulent entry as evidenced by your failure to disclose the military arrest of 20 April 1985. You waived all your procedural rights and on 12 August 1986, you were so discharged.

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 assertions of military sexual trauma (MST) and post-traumatic stress disorder (PTSD). Nevertheless, the Board concluded that these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct. Regarding your assertions of MST and PTSD, the Board noted that the severity of your misconduct outweighed the mitigation of your possible diagnosis. Finally, the Board concluded that the Department of Veterans Affairs (DVA) decision to recharacterize your service to "Honorable" for the sole purpose of receiving benefits does not negate your misconduct while serving on active duty which resulted in your "General" characterization of service. 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