



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

JDR
Docket No: 7562-14
17 August 2015

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

Dear 5 U.S.C.

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 6 July 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.

Further, regarding your request for a personal appearance, be advised that Board regulations state that personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board also noted that you should contact Headquarters, United States Marine Corps, Manpower Management Records and Performance Branch (MMRP), 2008 Elliot Road, Quantico, VA 22134-5030 to request that administrative corrections be made on your DD Form 214.

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, began a period of active duty on 6 January 1975, and served without disciplinary incident for about ten months. However, on 4 November 1975, you received nonjudicial punishment (NJP) for sleeping on duty. On 26 April 1976, you were convicted by summary court-martial (SCM) of assault. You were convicted of grand theft person in civil court on 28 September 1976 and sentenced to one year in jail and three years' probation.

Subsequently, administrative discharge action was initiated by reason of misconduct due to your civil conviction. At that time you elected to waive your procedural rights. Your case was forwarded, recommending an undesirable discharge by reason of misconduct and the separation authority concurred with the recommendation and directed an other than honorable discharge. On 14 June 1977, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service and desire to upgrade your discharge. The Board also considered your assertions of post-traumatic stress disorder (PTSD) and that in-service head trauma caused your misconduct. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct which resulted in NJP, SCM, and a one-year jail sentence based on your civil conviction for grand theft. The Board considered your assertion of PTSD in light of the Secretary of Defense's September 3, 2014 guidance to Boards for Correction of Military records regarding discharge upgrade requests by veterans claiming PTSD. The Board liberally considered whether your assertions of PTSD and/or head trauma were causative factors in the misconduct that resulted in your discharge. After full and careful consideration of the matter, the Board determined that there was insufficient evidence in the record, and you provided none, to support a conclusion that a causal relationship with the PTSD symptoms or head trauma and misconduct existed. Specifically, the Board concluded that your misconduct was not caused by your PTSD or a head injury and further determined that, even if there was a nexus between the PTSD and/or head trauma and the misconduct, the severity of the misconduct would

substantially outweigh any mitigation created by your PTSD and/or head trauma. 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