



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

TAL  
Docket No: 7778-14  
6 August 2015

Dear :

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 15 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.

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 22 January 1973. You served for eight months without disciplinary incident, but on 26 October 1973, you received nonjudicial punishment (NJP) for absence from your appointed place of duty. On 11 March 1975, you were convicted by special court-martial (SPCM) of unauthorized absence (UA) from your unit, larceny and writing a check without sufficient funds in your account. The sentence imposed was confinement at hard labor, a forfeiture of pay and reduction in paygrade. On 12 June 1975, you were UA from your unit until you surrendered on 22 April 1976 a period of 314 days. You made a written request for discharge for the good of the service to avoid trial by court-martial for the forgoing period of UA. 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. Your request was

granted and the commanding officer directed your other than honorable (OTH) discharge. 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 4 June 1976, you were discharged under OTH conditions.

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 that you were coerced into accepting the OTH discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct and 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 Marine Corps when your request for discharge was granted and should not be permitted to change it now. Regarding your assertion, there is documented evidence in the record that is contrary to your assertion. 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