



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

ES
Docket No: 8115-14
6 August 2015

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 22 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 6 November 1972. You served for about one month without disciplinary incident, but during the period from 10 January 1973 to 8 March 1974, you received three nonjudicial punishments (NJP) for failure to obey a lawful order on three different occasions, disobedience of a lawful order on two different occasions, and failure to go to place of duty.

It appears that you were pending special court-martial (SPCM) for nine violations of the Uniform Code of Military Justice to

include: attempting to escape from lawful custody, two offenses of failing to go to appointed place of duty, disrespect, disobeying a lawful command, disobeying a lawful order, wrongfully possessing a dangerous weapon, wrongfully using provoking words, and wrongfully communicating a threat. In this regard, you requested discharge for the good of the service (GOS) to avoid trial by court-martial for the foregoing offenses. On 15 April 1974, you were advised by military counsel concerning the consequences of such a request. Because you requested discharge in lieu of trial, you avoided the possibility of a punitive discharge and confinement at hard labor.

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 your assertion that you were sick, out of your mind, so you agreed to accept a GOS discharge. Nevertheless, the board concluded these factors were not sufficient to warrant an upgrade of your discharge because of the severity of your misconduct which resulted in your request for discharge. In regards to your assertion, the Board determined that you provided no documentary evidence to support your assertion that you were "sick", "out of your mind", prior to agreeing to accept a GOS discharge. Also, your record reflects that you were given a medical examination prior to discharge, and was found to be qualified to perform the duties of your rank at sea and in the field.

The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board further concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. 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