



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

SJN
Docket No: 8157-14
24 July 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 17 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 Navy and began a period of active duty on 26 August 1977. Your record is incomplete, in that it does not contain all of the documentation pertaining to your discharge. However, the Board found that on 8 March 1978, you received nonjudicial punishment (NJP) for unauthorized absence (UA). Additionally, it appears that during the period from 1 March 1979 to 21 March 1981, you had three periods of UA totaling 441 days. Based on your Certificate of Release or Discharge from Active Duty (DD Form 214), you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for what appears to be for 441 days of UA. Prior to submitting this request for discharge, you would have conferred with a qualified military lawyer, were advised of your rights, and were

warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and on 2 June 1981, you received an other than honorable discharge for the good of the service in lieu of trial by court-martial. 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.

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 change your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct resulting in your NJP, charges being preferred to a court-martial for what appears to be three periods of UA totaling over 14 months, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also 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