



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

MTN
Docket No: 8210-14
10 August 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 28 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 19 January 1999. During the period from 27 August to 29 October 1999, you received two nonjudicial punishments (NJP) and one summary court-martial (SCM) for unauthorized absence, disrespect to a staff noncommissioned officer, disobedience of a lawful order, assault, drunk and disorderly conduct, breaking restriction, failure to go to your appointed place of duty, making a false official statement, and insubordinate conduct to

a staff noncommissioned officer. Subsequently, your commanding officer initiated administrative discharge action by reason of misconduct due to frequent minor disciplinary infractions. On 17 November 1999, you consult with counsel and waived your right to an administrative discharge board. The separation authority directed an other than honorable conditions discharge due to frequent minor disciplinary infractions and you were so discharged on 13 December 1999.

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. Nevertheless, the Board concluded the factors were not sufficient to warrant recharacterization of your discharge given your two NJPs and SCM. The Board concluded that your repeated misconduct outweighed your desire to upgrade your discharge. Accordingly, your application has been denied.

Further, the Department of Veterans Affairs (DVA) only has the authority to recharacterize your service for their purposes. In other words, the DVA does not have the jurisdiction to change your naval record.

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