



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

TJR
Docket No: 8309-14/
4927-13
14 May 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, 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 8 May 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 27 June 1975. You satisfactorily served a year without disciplinary incident, but during the period from 23 June 1976 to 8 January 1980, you received nonjudicial punishment (NJP) on three occasions for a one day period of unauthorized absence and two specifications of failure to obey a lawful order as evidenced by wrongful possession of a machete and marijuana. You also underwent psychiatric evaluations due to your severe interpersonal difficulties and being at risk of harm to yourself and others. As a result, you were diagnosed with a personality disorder and recommended for an expeditious administrative separation.

Subsequently you were processed for an administrative separation by reason of unsuitability due to the diagnosed personality disorder. After waiving your procedural rights, your commanding officer recommended separation under honorable conditions by

reason of unsuitability due to the personality disorder. The discharge authority approved this recommendation and directed a general discharge by reason of unsuitability, and on 18 January 1980, while serving in paygrade E-3, you were so discharged and assigned an RE-4 reenlistment code.

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 change your narrative reason for separation and reenlistment code. It also considered your request for removal of derogatory material from your record, being awarded insignia pins, and restored to paygrade E-4. The Board further considered your diagnosis of post-traumatic stress disorder (PTSD) as the reason for your misconduct. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct, which resulted in three NJPs and included drug abuse.

Regarding your diagnosed PTSD, the Board reviewed your application under the guidance provided in the Secretary of Defense Memorandum of 3 September 2014, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder." Specifically, the Board considered whether your application was the type that was intended to be covered by this policy.

The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases."

The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" Post Traumatic Stress Disorder (PTSD). The memorandum further explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge.

You requested correction of your record to reflect an honorable discharge. As explained above, the purpose of the memorandum was to address applications of veterans who were discharged with an unfavorable characterization of service and potentially suffered from PTSD that impacted their characterization of service. It was designed to help veterans who did not have the benefit of a PTSD diagnosis during their period of service to have their discharge potentially upgraded. The policy memo states that veterans who suffered from PTSD prior the existence of a diagnoses find it difficult to "document conditions that form a

basis for mitigation in punitive, administrative, or other legal actions or to establish a nexus between PTSD and the misconduct underlying the servicemember's discharge with a characterization of service of under other than honorable conditions."

In this regard, the Board determined that your application did not warrant relief for two reasons. In making this decision, the Board closely examined both the language and intent of the policy memorandum. First, the Board interpreted the policy memorandum to apply to cases involving service members who were discharged with a characterization of service of "under other than honorable conditions" as stated in the memorandum. However, you possess a general discharge and as such the Board determined your case does not qualify for special consideration under the PTSD policy. Second, despite the determination that the policy no longer applies to you, the Board reviewed your application and gave liberal consideration of your being diagnosed with PTSD as a mitigating factor in your misconduct. They weighed the severity of the misconduct that formed the basis for your discharge against the general discharge, and based on their review, a general discharge is the appropriate characterization for your service in light of the evidence of PTSD. The Board felt that your multiple incidents of misconduct, despite the mitigation offered by the existence of PTSD, did not warrant relief in your case. 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 or other matter not previously considered by the Board within one year from the date of the Board's decision. 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