



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

SJN
Docket No: 0896-14
12 March 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 18 February 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 2 August 1993. On 24 November 1993, you received nonjudicial punishment (NJP) for underage drinking, disobedience, possession of a false military identification card, and conduct prejudice to good order and discipline. On 8 March 1995, you received NJP for wrongful use of a controlled substance. Subsequently, administrative discharge action was initiated by reason of misconduct due to wrongful drug use. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). Your case was forwarded to the separation authority recommending that you be discharged under other than honorable (OTH) conditions by reason of misconduct. The separation authority concurred and directed an OTH discharge by reason of misconduct. You were so discharged on 5 April 1995.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to upgrade your discharge, that your post service diagnosed post-traumatic stress disorder (PTSD) contributed to your misconduct while on active duty, and contention that you lied about your use of a controlled substance. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your two NJPs, one of which was for wrongful drug use. The Board noted that you waived the right to an ADB, your best chance for retention or a better characterization of service. Regarding your assertion that you were suffering from PTSD when your misconduct occurred, the Board noted that the severity of your misconduct outweighed the mitigations of your post service diagnosed PTSD. Further, it is well settled in the law that if a Sailor procures a discharge by fraud, he should not benefit from the fraud when it is discovered. Therefore, if you lied to get out of the military as you contend, no corrective action would be appropriate. 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