



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

EGA
Docket No: 2340-14
2 April 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 20 March 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 February 1969. You served for a year and three months without disciplinary incident, but during the period from 7 May 1970 to 18 October 1972, you received nonjudicial punishment (NJP) on two occasions and were convicted by court-martial. Your offenses were failure to obey an order, drunken reckless operation of a vehicle, drunk on duty, and unlawfully selling stolen property. Shortly thereafter, on 25 October 1972, you began a period of unauthorized absence (UA) for a

total of 64 days. In addition to your unauthorized absence, several military exchanges submitted reports of your outstanding bad checks totaling \$1,583.74.

On 26 December 1972, the foregoing period of UA was terminated. As a result, on 2 February 1973, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for unauthorized absence and cashing bad checks. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 6 April 1973, you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your character of service and assertion of post-traumatic stress disorder (PTSD) as a reason for your misconduct. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case, given the seriousness of your misconduct, which included repetitive and lengthy periods of UA resulting in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

Your assertion that you suffered from PTSD was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder" of September 3, 2014. In accordance with the guidance, the Board gave liberal and special consideration to treatment record documentation of PTSD symptoms and Department of Veteran Affairs determinations of the existence of service connected PTSD. In addition, the Board provided liberal consideration to finding PTSD where a service record substantiated the existence of PTSD symptoms or when a civilian

provider diagnosed PTSD. After applying these guidelines to the evidence in the case, the Board was not able to substantiate the existence of PTSD in your case.

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