



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

TAL

Docket No: 3128-14

5 November 2014

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 22 October 2014. 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 19 June 1997. On 19 February 2003, you were referred to substance abuse rehabilitation as a result of receiving a civilian citation for urinating in public while intoxicated. On 28 March 2003, you completed the intensive outpatient treatment and were directed to participate in a command monitored substance abuse program for a period of 52 weeks. On 10 October 2003, you were convicted in civil court of driving under the influence (DUI) of alcohol.

Subsequently, you were notified of pending administrative separation by reason of alcohol rehabilitation failure, at which time you waived your procedural rights to consult with legal counsel and to present your case to an administrative discharge board. Your commanding officer recommended discharge under honorable conditions by reason of alcohol rehabilitation failure.

The discharge authority approved this recommendation and directed separation under honorable conditions by reason of alcohol rehabilitation failure, and on 14 November 2003, you were so discharged.

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 assertions of sexual assault by a fellow sailor and post-traumatic stress disorder (PTSD). Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in a DUI civil conviction and failure to complete an alcohol rehabilitation program. Further, you were given an opportunity to defend your actions, but waived your procedural rights. Regarding your assertion of suffering from PTSD, the Board noted that you did not provide a diagnosis and that the severity of your misconduct outweighed the mitigation of your possible diagnosis. Finally, there is no evidence in the record, and you provided none, to support your assertion of being sexually assaulted. 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