



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

TAL
Docket No: 5226-14
29 April 2015

5 U.S.C. 552(b) (6)

Dear 5 U.S.C. 552(b)

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 22 April 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 9 September 1997. You served for a year and eight months without disciplinary incident, but during the period from 14 May 1999 to 29 July 1999, you received nonjudicial punishment (NJP) on two occasions. Your offenses were failure to obey a lawful order and wrongful use of marijuana.

Based on the information currently contained in your record it appears that you were subsequently involuntarily processed for separation by reason of misconduct due to drug abuse. In connection with this processing, you would have acknowledged the separation action and the separation authority would have approved a recommendation for separation. The record clearly shows that on 13 September 1999, you were discharged with an other than honorable separation by reason of misconduct due to drug abuse.

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 assertion of suffering with post-traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct. 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. Accordingly, your application has been denied.

The purpose of the Secretary of Defense memorandum on PTSD is to ease the process for veterans seeking to upgrade an "other than honorable" discharge based on misconduct with a Post-Traumatic Stress Disorder (PTSD) nexus and assist the Boards in reaching fair and consistent results. The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The Secretary 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.

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