



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

SJN
Docket No: 5465-14
16 June 2015

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

Dear 5 U.S.C.

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 5 June 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 Marine Corps and began a period of active duty on 30 July 1986. During the period from 17 July 1987 to 1 September 1989, you received three nonjudicial punishments (NJPs), and were convicted by two summary courts-martial (SCM). Subsequently, administrative discharge action was initiated by reason of misconduct due to a pattern of misconduct. After being afforded all of your procedural rights, your case was forwarded to the separation authority recommending that you receive an other than honorable (OTH) discharge due to misconduct. On 11 October 1989, the separation authority concurred and directed an OTH discharge by reason of misconduct. You were so discharged on 21 October 1989.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, post service accomplishments, medical issues, desire to upgrade your discharge, and assertion that you are receiving treatment for post-traumatic stress disorder (PTSD) and Bipolar disorder. Your assertion that you are being treated for PTSD was fully and carefully considered by the Board in light of the Secretary of Defense memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Request by Veterans Claiming PTSD" of 3 September 2014. 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. The Board reviewed your application and gave liberal consideration of your assertion that you are receiving treatment for PTSD as a mitigation factor in your misconduct. They weighed the severity of your misconduct that formed the basis for your discharge. Nevertheless, based on the information currently contained in your record, the Board concluded the mitigating factors listed above including your PTSD, were not sufficient to warrant recharacterization of your discharge given your three NJP's and SCM convictions. Finally, the Board noted that it appears that the Board of Veterans' Appeals upgraded your discharge status to "Honorable" in order for you to receive VA benefits only, and does not change or upgrade your characterization of service. 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. C. NEIDLE
Executive Director