



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

TAL
Docket No: 7771-14
13 August 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 17 July 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 2 July 1968. You served for a year and one month without disciplinary incident, but during the period from 5 August 1969 to 25 July 1970, you received nonjudicial punishment (NJP) on one occasion and were convicted by summary courts-martial (SCM) on five occasions. Your offenses were failure to go to your appointed place of duty, unauthorized absence (UA), willfully disobeying a lawful order from a commissioned officer, failure to obey a lawful general order and sleeping on post.

Subsequently, you were notified of pending administrative separation by reason of unfitness due to frequent involvement. You elected to consult with legal counsel and requested an administrative discharge board (ADB). On 6 October 1970, the ADB recommended an other than honorable (OTH) discharge by reason of unfitness due to frequent involvement. The separation authority agreed with the finding and recommendation of the ADB and directed your commanding officer to issue you an OTH discharge by reason of unfitness and on 28 October 1970, 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 assertion of suffering from 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 repeated misconduct. 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 Request 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 Veterans' Affairs determinations of the existence of service connected PTSD. The Board fully and carefully considered the existence of your PTSD and determined that it existed at the time of your discharge and weighed its existence as potential mitigation in the misconduct you committed. Specifically, the Board looked to see whether it was a causative factor in your misconduct and weighed it against the severity of your actions. After carefully considering the evidence, the Board determined the severity of your misconduct far outweighed any mitigation the PTSD provides. The offenses you committed were very serious in nature warranting the discharge characterization you received even taking into consideration the existence of PTSD. Accordingly, your application has been denied.

Further, regarding your request for a personal appearance be advised that Board regulations state that personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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)

ROBER J. O'NEILL
Executive Director