



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

SJN
Docket No: 10937-14
22 January 2015

[REDACTED]

Dear [REDACTED]

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 6 January 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.

On 1 March 1989, you reenlisted in the Navy after serving over 13 years of satisfactory service. On 11 October 1995, you were apprehended by the Navy Criminal Investigative Service in connection with a November 1989 death of a South Carolina woman. At that time, you were on terminal leave pending transfer to the Fleet Reserve. On 16 October 1995, you were placed on "Legal hold pending trial by general court-martial (GCM)." On 28 November 1995, your enlistment was involuntarily extended pending trial by court-martial. On 17 April 1996, you pled guilty to charges of premeditated murder, weapons possession and drug offenses. You were sentenced to confinement for life, forfeiture of all pay and allowances, a reduction in paygrade and a dishonorable discharge (DD). Pursuant to a pretrial agreement, your confinement was reduced to 30 years. You received the DD on 17 January 2006 after appellate review was completed.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to upgrade your discharge, request for compensation for injuries you allege to have suffered during your service, and retainer pay as a member of the Navy Fleet Reserve. Nevertheless, based on the information currently contained in your record, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your GCM conviction of very serious offenses, compensation for injuries you alleged to have suffered during your service or to be transferred to the Navy Fleet Reserve. In this regard, as stated in the Navy Personnel Command letter dated 22 August 2014, the United States Court of Appeals for the Tenth Circuit denied your claim for damages for service injury in 2001, and the United States Court of Appeals for the Federal Circuit found you were never transferred to the Fleet Reserve. Additionally, it stated that your discharge was a lawful punishment adjudged by a duly authorized general court-martial, you have no legal status in the Navy, are not a member of the Fleet Reserve, and not entitled to any pay or benefits. 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,



ROBERT J. O'NEILL
Executive Director