



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

TJR
Docket No: 12091-14/
6637-12
24 November 2014

[REDACTED]

Dear [REDACTED]

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, again considered your application on 20 November 2014 based upon a request from the Assistant General Counsel for Assistant Secretary of the Navy, Manpower and Reserve Affairs. The panel consisting of Messrs. Hicks, Spooner, and Swarnes voted unanimously to deny your request. In this regard, your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. The 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.

In addition to the foregoing documentation, the Board considered the Naval Discharge Review Board (NDRB) decisional document, ND-78-01071/780111 which resulted from their review on 12 February 1979. A copy of this decisional document is enclosed for your information. The Board also reviewed the correspondence and enclosures from your attorney in which he requests an upgrade of your discharge.

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. In this regard, the Board substantially concurred with the NDRB decisional document.

The record reflects that you enlisted in the Navy on 11 April 1940 at the age of 18. You served without disciplinary incident for about one year and four months. However, during the period

from 18 August 1941 to 24 October 1944 you received captain's mast (CM) on five occasions. Your misconduct included being absent from leave on two occasions, being late for muster, misbehaving in a motor launch underway, and disobedience.

Your record further reflects civil involvement in June 1945. In this regard, you stole an automobile, robbed a bus driver, and held up a gas station. Shortly thereafter, on 4 August 1945, you were convicted by civil authorities of unarmed robbery. Subsequently, in October 1945, you were processed for an administrative separation by reason of misconduct due to civil conviction. Presumably, after waiving your procedural rights, your commanding officer recommended you be issued an undesirable discharge by reason of misconduct due to the civil conviction. The discharge authority approved this recommendation on 19 October 1945, and directed your commanding officer to issue you an undesirable discharge by reason of misconduct. On 1 November 1945, while in the custody of civil authorities, you were so discharged.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth, desire to upgrade your discharge, service in combat (to include being a Pearl Harbor survivor), and post service conduct. It also considered the dismissal of your civil conviction. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct in the military community and your actions that led to a conviction by civil authorities. With that being said, no discharge is automatically upgraded due solely to an individual's good post service conduct, combat service, youth, or the passage of time. The Board concluded that you received the proper 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,

A handwritten signature in black ink, appearing to read "R. J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL
Executive Director

Enclosures