



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

TAL
Docket No: 13168-14
14 August 2015

[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.

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 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 that 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 27 March 1964. You served for a years and two months without disciplinary incident, but on 21 June 1965, you received nonjudicial punishment (NJP) for unauthorized absence (UA) from your unit for a period of 12 days, failure to obey a lawful general regulation and underage drinking. On 26 August 1965, you were convicted in civilian court of assault with a deadly weapon and sentenced to confinement for an undeterminable period of time.

Subsequently, you were notified of pending administrative separation by reason of misconduct due to civilian conviction at which time you waived your procedural rights to consult with legal counsel and to present your case to an administrative discharge board (ADB). Your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to civilian conviction. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct, and on 3 January 1966, 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 misconduct that resulted in a civil conviction. Further, you were given an opportunity to defend your actions, but waived your procedural rights. Your assertion of suffering 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 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.

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 large black rectangular redaction box covers the signature area.

ROBERT J. O'NEILL
Executive Director