



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

SJN
Docket No: 3640-14
14 April 2015

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 April 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 7 April 1966. On 18 March 1967, a summary court-martial (SCM) charged you with failing to go at the time prescribed to your appointed place of duty, and disobeying a lawful order from your superior noncommissioned officer. You were found not guilty of disobeying a lawful order, and were only convicted of failing to go at the time prescribed to your appointed place of duty. You were sentenced to 30 days of confinement at hard labor. On 18 March 1976, the convening authority approved your sentence and ordered the execution of your confinement at hard labor. You remained on active duty until you were transferred to the Marine Corps Reserve on 12 April 1968, at the completion of your required service.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service and desire to have your SCM removed from your official records. Nevertheless, the Board found that these factors were not sufficient to warrant the removal of your SCM conviction from your official records because you were found not guilty of disobedience. Finally, the Board is expressly forbidden from reviewing the findings of guilt rendered by a court-martial and must restrict its review to the appropriateness of the sentence. Accordingly, your application has been denied.

The purpose of the Secretary of Defense memorandum on Post-Traumatic Stress Disorder (PTSD) is to ease the process for veterans seeking to upgrade and "other than honorable" (OTH) discharge based on misconduct with PTSD nexus and assist the Board in reaching fair and consistent results. 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 policy specifically covers veterans who received OTH discharges. You received a general discharge under honorable conditions; a characterization of service that is greater than an OTH discharge. Accordingly, the panel determined that your application was not covered by the guidance. In making this decision, the panel closely examined both the language and intent of the policy memorandum.

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