



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

TAL
Docket No: 4069-14
8 April 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 18 March 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 on 15 December 1998 under a drug waiver, having acknowledged using marijuana and lysergic acid diethylamide (LSD) on several occasions. On 31 March 2009, you tested positive for wrongful use of cocaine. Subsequently, you were notified of pending administrative separation by reason of misconduct due to drug abuse. You consulted with counsel and elected to present your case to an administrative discharge board (ADB). The ADB found that you committed misconduct and recommended that you be retained in the Marine Corps. Your commanding officer disagreed with the ADB recommendation for retention and recommended discharged with a general characterization of service by reason of misconduct due to drug abuse. The discharge authority approved this recommendation and directed separation under honorable conditions by reason of misconduct, and on 18 March 2011, you were so discharged and assigned an RE-4 reenlistment code.

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 reenlistment code. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct. Additionally, the Board considered the existence of your Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) diagnosed 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 and TBI provides. The offense you committed was very serious in nature warranting the discharge characterization you received even taking into consideration the existence of PTSD and TBI. Finally, a Marine separated by reason of misconduct must receive an RE-4 reenlistment code. 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 "Robert J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL
Executive Director