



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

SJN
Docket No: 5075-14
15 May 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 12 May 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 28 December 1993. On 17 April and 5 May 1994, you were counseled regarding your substandard physical performance, and warned that further deficiencies could result in administrative discharge action. On 23 May 1994, you were diagnosed with chronic cervical strain, that existed prior to your active duty service. Subsequently, it was directed that you be processed for separation by reason of erroneous enlistment due to your medical condition. After being afforded all of your procedural rights, you were discharged with an entry level separation by reason of erroneous enlistment on 16 June 1994.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your relatively short period of service, desire to upgrade your discharge, and belief that your entry level separation would automatically be upgraded six months after your discharge. Nevertheless, the Board found that these factors were not sufficient to warrant changing your characterization of service given your diagnosed medical condition that existed prior to your entry. With regard to your characterization of service, the Board noted that you were notified of your separation process within 180 days of the beginning of your period of active service. Navy regulations authorize an uncharacterized entry level separation if the processing of a Sailor separation begins within 180 days of his entry on active duty. Finally, you are advised that there is no provision of law or in Marine Corps regulations that allows for recharacterization of a discharge automatically after six months or due solely to the passage of time. 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