



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

JRE

Docket No. 5947-14

22 January 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. Although the application was not filed in a timely manner the Board found it in the interest of justice to consider it.

A three member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 January 2015. 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 on 9 February 1992. You received nonjudicial punishment on 12 May 1993 for assaulting another Sailor by swinging at her with your fist. On 7 December 1994 you were notified that you were being considered for separation because of multiple failures to meet physical readiness test and weight control standards, as well as by reason of misconduct/ due to the commission of a serious offense. On 11 January 1995, the Bureau of Naval Personnel directed a general discharge by reason of misconduct, and you were so discharged on 2 March 1995. On 8 February 1989, the Naval Discharge Review Board

(NDRB) upgraded your discharge to honorable and changed the basis of your separation to "Physical Standards" (weight control failure). The NDRB found that the criteria for separation by reason of misconduct/commission of a serious offense had not been met in your case because simple assault not consummated by a battery was not a serious offense as that term was defined in the regulations governing enlisted administrative separations. The NDRB noted, however, that the criteria for separation by reason of weight control failure had been met in your case, and that you would have been separated for that reason if you had not been discharged by reason of misconduct.

The Board could not find any indication in the available records or your application that you were unfit for service by reason of physical disability at the time of your discharge. It noted that although your discharge by reason of misconduct was erroneous, you would not have been permitted to remain on active duty in any event, given your documented failure to meet weight control and physical readiness standards. In addition, the Board noted that there are no provisions of law or regulation which permit it to grant compensation for pain and suffering. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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