



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

JDR  
Docket No: 6229-14  
10 July 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 16 June 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, began a period of active duty on 5 February 1990, and served without disciplinary incident for about five years. However, during the period from 15 February 1995 to 24 April 1995, you were formally counseled and advised of deficiencies in performance and conduct for exceeding military weight standards, inadequate and substandard performance of duty, developing a pattern of misconduct due to frequent involvement with civil and military authorities, and for having your government operator's license suspended. On 10 August 1995, you received nonjudicial punishment (NJP) for

failure to go to your appointed place of duty. You were formally counseled again on 2 October 1995 due to financial irresponsibility. Although the documentation is not in your record, it appears that on 2 March 1996, you were arrested by civil authorities on worthless check offenses and sentenced to 120 days in jail.

On 11 March 1996, you were charged with violating Articles 86, 107, 121, and 123 of the Uniform Code of Military Justice (UCMJ). As a result of the foregoing charges, you submitted a written request for an other than honorable discharge to avoid trial by court-martial. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and the commanding officer was directed to issue an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 1 July 1996, you were issued an other than honorable discharge.

The Board, in its review of your entire application and record (although incomplete), carefully weighed all potentially mitigating factors, such as your record of service and desire to upgrade your discharge. The Board also considered your assertions that you do not deserve to be punished in this way, that you are having service connected health issues, and that you are ineligible for care at VA facilities. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct, which resulted in four formal counselings, one NJP, one civil conviction, and charges of violations of the UCMJ. With regard to your assertions, the Board noted that you were advised of your rights and warned of the probable adverse consequences of a discharge with an other than honorable characterization of service. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. 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 "R. J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL  
Executive Director