



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

ES
Docket No: 6316-14
14 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 6 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 reenlisted in the Marine Corps and began a period of active duty on 17 April 1996 and continued to serve for about one year and four months without disciplinary incident. However, on 13 August 1997 and 31 July 2003, you were convicted by a special court-martial (SPCM) for wrongfully having sexual intercourse, disobedience of an order, and assault; and received nonjudicial punishment (NJP) for larceny.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior period of satisfactory service and desire to have your record expunged of offense for which you were convicted by SPCM. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because there is documented evidence in the record that you were found "guilty" of the offenses for which you would like removed from your record. Further, the Board does not have the authority to overturn the findings of guilty rendered by courts-martial. Finally, the Board has no authority to consider your request or assertions pertaining to improprieties, claims or legal error, or allegations of impartiality at courts-martial. In this regard, the Board must limit its review to determining whether the sentence should be modified as a matter of clemency. 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