



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

JDR
Docket No: 6968-14
7 August 2015

5 U.S.C 552(b) (6)

Dear

5 U.S.C 552(b) (6)

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 23 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 24 March 1997, and served without disciplinary incident for about one year and five months. However, on 31 August 1998, you received nonjudicial punishment (NJP) for making a false official statement and larceny. You were also formally counseled on 22 July 1999 for not being at work on time. On 19 August 1999 you received NJP for wrongful use and possession of marijuana. Subsequently, administrative discharge action was initiated by reason of misconduct due to drug abuse. After consulting with legal counsel, you waived your procedural right to present your case to an administrative discharge board (ADB).

Your case was forwarded, recommending an other than honorable discharge by reason of misconduct due to drug abuse. The separation authority concurred with the recommendation and directed an other than honorable discharge. On 15 November 1999, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to upgrade your discharge, and your assertion that the discharge would be upgraded six months after discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct which resulted in NJP for three violations of the Uniform Code of Military Justice. With regard to your assertion, be advised that there is no provision in law or regulations that allows for a discharge to be automatically upgraded 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,

5 U.S.C 552(b) (6)

ROBERT J. O'NEILL
Executive Director