



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

JDR
Docket No: 7087-14
5 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 20 September 1994, and served without disciplinary incident for about two years. However, on 4 December 1996, you were formally counseled and advised of your failure to go to your appointed place of duty and that failure to take corrective action may result in administrative separation or limitation on further service. On 17 December 1996, you received nonjudicial punishment (NJP) for failing to go to your appointed place of duty and disobeying an order. On 25 April 1997, you received NJP for failing to go to your appointed place of duty and disobeying an order or regulation. You received NJP again on

2 October 1997 for failure to obey an order or regulation and driving while intoxicated. On 15 January 1998 you received your fourth NJP for failure to obey an order or regulation.

Subsequent to the foregoing misconduct, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After consulting with legal counsel, you waived your right to present your case to an administrative discharge board (ADB). Your case was forwarded, recommending discharge under other than honorable (OTH) conditions by reason of misconduct due to a pattern of misconduct. The separation authority approved the recommendation and directed an OTH discharge. On 3 April 1998, 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 and desire to upgrade your discharge. The Board also considered your assertion that your discharge was unjust due to constant harassment and discrimination. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your repeated misconduct which resulted in four NJPs even after you had been counseled and advised that failure to take corrective action may result in administrative separation. In regard to your assertions, the Board determined that your allegations of harassment and discrimination do not excuse your misconduct or failure to adhere to Marine Corps regulations and the command's decision to take disciplinary action and administrative separation was warranted. Further, the Board noted that the record shows that you were given an opportunity to defend yourself, and perhaps receive a better characterization of service, but waived your procedural right to present your case to an ADB. 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