



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

JDR
Docket No: 7480-14
5 August 2015

Dear

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 30 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 Navy, began a period of active duty on 11 August 1976, and served without disciplinary incident for about one year and four months. However, although the record is not complete, it appears that you received nonjudicial punishment (NJP) on 13 December 1977. On 24 April and 16 May 1978, you received NJP for leaving your appointed place of duty and failure to go to your appointed place of duty. You also received a formal counseling on 31 July 1978 for being a discredit to the Naval service because of your disobedience, being sloppy in appearance while in uniform, being extremely caustic towards authority, for not supporting equal opportunity,

for frequent verbal or physical arguments, unauthorized absence, and for using an intimidating personality against others. On 24 November 1978, you were convicted by general court-martial (GCM) of carnal knowledge, committing sodomy with a child under the age of 16 by force and without consent. You were sentenced to confinement at hard labor for six months, forfeiture of two-thirds pay for six months, and a reduction in paygrade to E-1. While you were confined, you requested a good of the service (GOS) discharge in lieu of trial by subsequent special court-martial.

Subsequently, your request was granted and the commanding officer was directed to issue an other than honorable (OTH) discharge by reason of the GOS. As a result of this action, you were spared the stigma of another court-martial conviction and the potential penalties of a punitive discharge and further confinement at hard labor. On 4 June 1979, you were issued an OTH discharge.

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 you did not mature until after leaving the Navy. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct which resulted in three NJPs and your GCM conviction based on carnal knowledge and forcible sodomy. With regard to your assertion, the Board believed that considerable clemency was extended to you when your request for discharge to avoid a subsequent trial by court-martial was approved. The Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now that you feel you have matured. 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