



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

JDR
Docket No: 7527-14
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.

Further, regarding your request for a personal appearance, be advised that Board regulations state that personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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 28 May 1980, and served without disciplinary incident for about eight months. However, on 10 February 1981, you received

nonjudicial punishment (NJP) for unauthorized absence (UA) and missing a movement. On 26 February 1981, and again on 7 April 1982, you received NJP for possession of marijuana.

Subsequent to the foregoing misconduct, administrative discharge action was initiated by reason of misconduct due to drug abuse. After consulting with legal counsel, you elected your procedural right to present your case to an administrative discharge board (ADB). The ADB determined that you had committed misconduct and recommended a general discharge by reason of misconduct. However, your commanding officer recommended an other than honorable discharge. The discharge authority concurred with the ADB's recommendation and directed a general discharge by reason of misconduct due to drug abuse, and on 5 December 1983, 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 after a certain waiting period. 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 for two drug abuse incidents, UA and missing a movement. 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 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