



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

TJR  
Docket No: 827-12  
30 January 2015

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 January 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. In addition, the Board considered the advisory opinion provided by the Deputy Assistant Judge Advocate General (Administrative Law) dated 24 March 2014, and your counsel's response thereto, dated 19 November 2014.

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 entered on active duty in the Navy on 24 April 1998. You served without disciplinary infraction until 25 December 2008, when you were the subject of a pending trial by court-martial for wrongful possession of child pornography. About seven months later, on 7 July 2009, you were convicted by civil authorities after you pled guilty to and were found guilty of possession of child pornography. You were sentenced to confinement for 40 months.

Subsequently, you were administratively processed for an administrative separation by reason of misconduct. On 27 March 2010, a Board of Inquiry (BOI) determined that you had committed misconduct and made a recommendation to separate you with a general characterization of service, and to allow your continued

service for retirement purposes, specifically, allow you to retire with 20 years of active duty service. After review and consideration of the recommendation from the BOI, on 27 July 2011, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) directed your separation under honorable conditions by reason of misconduct due to sexual perversion, and on 31 August 2011, you were so discharged after serving less than 20 years on active duty service.

An advisory opinion from the Deputy Assistant Judge Advocate General (Administrative Law) states, in part, that your discharge was proper even though your Certificate of Discharge or Release from Active Duty (DD Form 214) contained an administrative error, that is correctable by the issuance of a DD Form 215. It also states that you were not eligible for voluntary retirement because you had less than 20 years of active duty service, and that the BOI's recommendation for continued service to allow retirement after 20 years of active duty service was beyond their authority. Further, the advisory states that because the refusal of issuing permanent change of station orders, temporary duty or temporary additional duty orders is within the discretion of the command, no error or injustice occurred when such action was taken in your case.

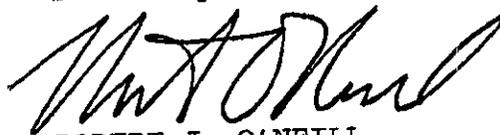
The Board, in its review of your record and application with its supporting documentation, carefully weighed all potentially mitigating factors, such as your allegations that your discharge was improperly effectuated, a BOI recommendation was not given due consideration, and an injustice occurred when you were refused orders that would allow you to reach 20 years of retirement eligible service. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct as a commissioned officer. Further, the Board concluded that your allegations did not amount to substantial evidence that reflects an injustice or error occurred in your case. With that being said, the Board substantially concurred with the comments contained in the advisory opinion.

The Board also considered your diagnosis of post-traumatic stress disorder (PTSD) in light of the Secretary of Defense's September 3, 2014 guidance to Boards for Correction of Military Records regarding discharge upgrade requests by veterans claiming PTSD. Even though you are requesting a retirement vice an upgrade in discharge, the Board liberally considered whether your PTSD was a causative factor in the misconduct that resulted in your separation. After a full and careful consideration of the matter, the Board determined that there was insufficient evidence in the record to support a conclusion that a causal relationship with the PTSD symptoms and misconduct exists. Specifically, the Board concluded that the downloading of child pornography was not

caused by your PTSD and further determined that, even if there was a nexus between the PTSD and the downloading of child pornography, the severity of the misconduct would substantially outweigh any mitigation created by your PTSD. 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 or other matter not previously considered by the Board. 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 dark ink, appearing to read "R. J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL  
Executive Director