



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

TJR
Docket No: 3690-15
14 May 2015

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

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

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.

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 8 May 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 were commissioned in the Navy and began a period of active duty on 6 October 2005. You served for nearly three years without disciplinary incident, but on 9 May 2008, you submitted your resignation from the Navy in lieu of trial by court-martial. In this regard, on 12 May 2008, you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty, failure to obey a lawful order, unbecoming conduct, and five specifications of making false official statements. The punishment imposed with restriction for 60 days, forfeiture of pay, and a punitive letter of reprimand.

On 1 August 2008, the Assistant Secretary of Navy (Manpower and Reserve Affairs) (discharge authority) accepted your resignation and directed separation under other than honorable conditions by reason of misconduct, and on 28 August 2008, you were so discharged.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and change your narrative reason for separation. It also considered your assertion that you suffered with post-traumatic stress disorder (PTSD) and your documentation which reflects that you have been diagnosed with renal disease, diabetes mellitus, and a depressive disorder. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your repeated misconduct as a commissioned officer of the Navy. The Board believed that considerable clemency was extended to you when your resignation was accepted so that you could avoid being tried by court-martial.

Regarding your assertion PTSD, the Board reviewed your application under the guidance provided in the Secretary of Defense Memorandum of 3 September 2014, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," and concluded that the severity of your misconduct outweighed the mitigation offered by your unsubstantiated claim for PTSD. Accordingly, your application has been denied. 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 within one year from the date of the Board's decision. 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