



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

[REDACTED]
Docket No: 3463-16

APR 08 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your 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 12 January 2017. 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 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 17 October 1972, and served five months without disciplinary incident. Between 26 March 1973 and 13 September 1974, you received four nonjudicial punishments (NJP) for three instances of unauthorized absence (UA) from your appointed place of duty, failure to obey lawful orders, leaving your firewatch post without being properly relieved, and a 15-day UA period. Additionally, on 3 April 1974, you were convicted by summary court-martial (SCM) for willfully disobeying a lawful order and breaking restriction. On 23 September 1974, you began an UA period which lasted 43 days. You returned on 4 November 1974 but absented yourself from your unit two months later on 9 January 1975, a UA which terminated on 7 April 1976, totaling 453 days.


On 22 April 1976, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for your extended periods of UA. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and the Commanding Officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the

stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 7 May 1976, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors such as your youth and immaturity and your desire to upgrade your discharge. The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Additionally, there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge upgrade, recharacterization of service, or a change in a reentry code 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 record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,


Executive Director