



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

[REDACTED]
Docket No: 3555-16
JAN 23 2017

[REDACTED]
Dear [REDACTED]

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 25 October 2016. 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 Marine Corps and began a period of active duty on 14 December 1992. During the period from 25 October to 29 December 1994, you received three nonjudicial punishments (NJP) for the following offenses: unauthorized absence (UA), making a false official statement, assisting with breaking restrictions, larceny, and disobeying a lawful order. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to minor disciplinary infractions. After you waived your procedural rights—which included the right to present your case before a Disciplinary Review Board—your commanding officer recommended an other than honorable (OTH) discharge by reason of misconduct due to minor disciplinary infractions. The discharge authority approved this recommendation and directed an other than honorable discharge. On 3 March 1995, you were 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 character of service, your assertions of post-traumatic stress disorder (PTSD), and your desire for medical benefits, your assertion that the characterization should be upgraded based on the passage of fifteen years, and your assertion that heavy drink contributed to your misconduct.


However, the Board concluded these factors were not sufficient to warrant relief in your case. Moreover, the Board felt that you did not provide sufficient evidence to support your claim of an error or injustice. Accordingly, your application has been denied.

Your assertion of PTSD was carefully considered by the Board in light of the Secretary of Defense's Memorandum "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post-Traumatic Stress Disorder" of September 3, 2014. The memorandum recognizes that these Boards are not investigative bodies, but provides supplemental guidance to assist the Boards in reaching fair and consistent results when considering whether medical or other evidence indicates PTSD may have contributed to or mitigated the circumstances of a veteran's discharge from the military. However, the Board concluded the information in your service record and statement you provided was not enough to substantiate your claim of PTSD at the time of your misconduct. The Board further concluded that, even if PTSD existed at the time of your discharge, the seriousness of your misconduct, as evidenced by three NJPs, outweighed any mitigation that would be offered by the PTSD.

Regarding your assertion of needing medical benefits from the Department of Veterans Affairs (DVA), the Board believes that under current regulations, you may now be eligible for such benefits. You should contact the nearest office of the DVA concerning your right to apply or reapply for benefits or appeal an earlier unfavorable determination. In regards to your assertion that it has been 15 years since your discharge, the Board noted there is no provision in law or regulations that allows for re-characterization of a discharge due solely to the passage of time. Finally, the Board determined that your alleged heavy drinking does not excuse your misconduct. It is the opinion of the Board, that disciplinary action and administrative separation were appropriate at the time of your discharge.

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 applying for correction of an official naval record, the burden is on the applicant to demonstrate the existence of the probable material error or injustice.

Sincerely,


Executive Director