



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

[REDACTED]
Docket No: 6554-16

NOV 01 2017

[REDACTED]
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.

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 9 August 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 naval record, and applicable statutes, regulations, and policies.


You enlisted in the Marine Corps and began a period of active duty on 23 February 1987. On 24 March 1987, you were granted a waiver and retained in the Marine Corps after testing positive for a controlled substance during urinalysis testing at recruit training. You served for about 11 months without disciplinary incident, but during the period from 15 January 1988 to 15 April 1988, you received nonjudicial punishment (NJP) on four occasions. Your offenses were drunk and disorderly conduct, failure to obey a lawful order, assault, and failure to obey a lawful. On 29 April 1988, you were in an unauthorized absence (UA) status from your unit until you were apprehended on 14 December 1989 a period of 609 days.

On 28 December 1989, you made a written request for discharge for the good of the service to avoid trial by court-martial for the aforementioned period 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. Your request was granted and the commanding officer directed your other than honorable (OTH) discharge. 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 5 January 1990, you were discharged under OTH conditions.

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. The Board carefully weighed all potentially mitigating factors and your contention that you were following orders from a higher command, which got you in trouble, injured physically, ruined your career and life. The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your repeated misconduct that resulted in four NJPs, a period of UA lasting more than a year and eight months, and 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. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Finally, the Board noted that there is no evidence in your record, and you submitted none to support your contention. Accordingly, your application has been denied.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously considered by the Board. In the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,


Executive Director