



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

Docket No: 6933-16/  
162-15  
NOV 09 2017

Dear [REDACTED]

This is in reference to your latest reconsideration request dated 3 August 2016. You previously petitioned the Board and were advised in our letter that your applications had been disapproved. Your case was reconsidered in accordance with Board of Correction of Naval Records procedures that conform to Lipsman v. Secretary of the Army, 335 F.Supp.2d 48 (D.D.C. 2004).

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board for Correction of Naval Records, sitting in executive session on 12 September 2017. The names and votes of the members of the panel will be furnished upon request. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies.

You presented as evidence a personal statement and a court order for expungement of your criminal record. The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and court documents from the State of [REDACTED] dated 22 July 2016 to be added to your military record and your contentions that the Board was misinformed, you feel that the Board doesn't know the first thing about what happened 40 years ago, you were not apprehended, you informed the Marines about what you were accused of and where you were at, you are highly upset about this because the Board did not fully investigate this, that you and your lawyer investigated this nonsense and there was no information anywhere to be found, and the charges the State of [REDACTED] allegedly accused you of no longer exist.

The Board noted that your record contains documented evidence which is contrary to your contentions. Your service record clearly shows that you were in an unauthorized absence (UA) status on 11 July 1974 until you were apprehended by civilian authorities on 15 January 1975, [REDACTED] County Superior Court suspended your robbery sentence to three year probation on 1 December 1975, you were returned to your command and placed on restriction in lieu of confinement awaiting action from higher authority on 4 December 1975, you were notified of your pending administrative separation by reason of misconduct at which time you waived your

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procedural rights to consult with legal counsel and to present your case to a Board on 5 December 1975, the Commanding General of [REDACTED] approved your undesirable discharge on 16 January 1976, and you were discharged from the Marine Corps on 26 January 1976.

Additionally, the Board noted that on original application (DD Form 149) dated 2 December 2014, that you stated that "during that time period I was accused of a crime I didn't commit under civilian justice. Also at that time my father was dying. After the civilian injustice was corrected I was so traumatized I myself voluntarily decided to resign. Didn't think it would be printed like this." The Board noted that your record shows that you were on a four year contract as an enlisted Marine and that only Marine Corps officers are allowed to resign. Your record clearly shows that you initialed and signed your notification of your pending administrative separation by reason of misconduct on 5 December 1975. In doing so, you gave up your first and best opportunity to advocate for retention or a more favorable characterization of service.

Lastly, the Board commends you on your 22 July 2016 criminal record being expunged but after careful and conscientious consideration of the entire record and new evidence, the Board determined that the documentation that you provided, even though not previously considered by the Board, was insufficient to establish the existence of probable material error or injustice. The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct that resulted in a lengthy period of UA and a civilian conviction. Accordingly, your application is once again denied.

As for your desire to have the Board add your court documents from the State of Indiana dated 22 July 2016 to your military record, the Board noted that your military record is maintained for your periods in service, which these documents did not fall with the dates you served.

The Board is not an investigatory body and it is your responsibility to provide sufficient evidence to show the error or injustice. 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,

[REDACTED]

Executive Director