



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

[REDACTED]
Docket No: 7893-16/
11212-15
FEB 05 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your latest reconsideration request initially dated 30 January 2016, and finalized by you on 5 May 2016, in which you requested to have your discharge upgraded. You previously petitioned the Board and were advised in our letter that your application had been disapproved. Your case was reconsidered in accordance with Board for Correction of Naval Records procedures that conform to Lipsman v. Secretary of the Army, 335 F. Supp. 2d 48 (D.D.C. 2004).

Your current request has been reconsidered by a three-member panel of the Board for Correction of Naval Records, sitting in executive session on 23 November 2016. 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 and any material submitted in support of your application.

After careful and conscientious consideration of the entire record, the Board determined that your statement regarding the circumstances surrounding your discharge, even though not previously considered by the Board, was insufficient to establish the existence of material error or injustice.

Your DD-214 discharge certificate indicates that you received an Other Than Honorable (OTH) discharge as part of a written request in order to avoid a trial by court-martial. Prior to submitting this type of request, you would have 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. As a result of this request, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. 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. Finally, there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge upgrade or recharacterization of service due solely to the passage of time. Accordingly, your application has been denied.

In the absence of sufficient material evidence for reconsideration, the decision of the Board is

final, and your only recourse would be to initiate action, at no cost to the Board, to a court of appropriate jurisdiction.

Sincerely,



Executive Director