



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

SJN
Docket No: 4376-14
20 April 2015

5 U.S.C. 552(b)
(6)

Dear 5 U.S.C.

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 15 April 2015. 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 injustices.

You enlisted in the Marine Corps and began a period of active duty on 21 March 1983. On 15 August 1984 you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for 158 days of unauthorized absence (UA). Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and on 27 August 1984, you received an OTH discharge in lieu of trial by court-martial. 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.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to upgrade your discharge, and that you are seeking treatment for Post-Traumatic Stress Disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your lengthy period

of UA. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also 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. Accordingly, your application has been denied.

Your assertion that you are seeking treatment for PTSD was fully and carefully considered by the Board in light of the Secretary of Defense memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Request by Veterans Claiming PTSD" of 3 September 2014. The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The Secretary explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge. The Board reviewed your application and gave liberal consideration of your assertion that you are seeking treatment for PTSD as a mitigation factor in your misconduct. They weighed the severity of your misconduct that formed the basis for your discharge. In making this decision, the Board closely examined both the language and intent of the policy memorandum, and felt that your misconduct did not warrant relief.

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 naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5 U.S.C. 552(b) (6)

ROBERT J. O'NEILL
Executive Director