



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

TLG
Docket No: 5393-14
26 May 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. The application was filed in a timely manner.

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 22 May 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 injustice.

You enlisted in the Navy and began a period of active duty on 21 June 1991. You served for about 13 months without disciplinary incident. However, during the period from 5 June to 30 July 1992, you received nonjudicial punishment (NJP) for three periods of unauthorized absence (UA), two specifications of disrespect and disobedience. You were also in an UA status on three occasions for nine days.

During the period from 27 August 1992 to 24 March 1993, you were again UA on seven occasions for 35 days. Your record also

reflects that you committed other disciplinary infractions, specifically, disrespect and disobeying lawful orders during this timeframe. In this regard, it appears that you requested discharge for the good of the service to avoid trial by court-martial for the foregoing disciplinary infractions. Regulations required that before making such a request, an individual had to be advised by military counsel concerning the consequences of such a request. Since the record shows that you were discharged for separation in lieu of trail by court-martial on 25 March 1993, the Board presumed that the foregoing occurred in your case. Because you requested discharge in lieu of trail, you avoided the possibility 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 desire to upgrade your discharge and assertion of post-traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct, which resulted in NJP and presumably your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board further concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted. Finally, the Board considered your assertion of PTSD 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. However, the Board was unable to substantiate your claim of PTSD. Accordingly, your application has been denied.

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