



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

JDR
Docket No: 5944-14
10 July 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, 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 12 June 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.

On 18 March 1988, you reenlisted in the Navy after serving over five years of satisfactory service. During the period from 31 August 1990 to 4 December 1992, you received four counselings for failing to meet physical readiness standards. On 14 February 1994, you were convicted by special court-martial (SPCM) of failure to obey a lawful order and wrongful use of cocaine.

Subsequently, administrative separation action was initiated by reason of misconduct due to the commission of a serious offense.

After you waived your procedural rights, your case was forwarded to the separation authority recommending that you receive an other than honorable (OTH) discharge by reason of misconduct due to the commission of a serious offense. The separation authority concurred and directed an OTH discharge by reason of misconduct. On 1 June 1994, you were so discharged.

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. The Board also considered your assertion of post-traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant an upgrade of your discharge. The Board considered your assertion of PTSD in light of the Secretary of Defense's September 3, 2014 guidance to Boards for Correction of Military records regarding discharge upgrade requests by veterans claiming PTSD. The Board liberally considered whether your PTSD was a causative factor in the misconduct that resulted in your discharge. After full and careful consideration of the matter, the Board determined that there was insufficient evidence in the record, and you provided none, to support a conclusion that a causal relationship with the PTSD symptoms and misconduct existed. Specifically, the Board concluded that your misconduct was not caused by your PTSD and further determined that, even if there was a nexus between the PTSD and the misconduct, the severity of the misconduct would substantially outweigh any mitigation created by your 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 or other matter not previously considered by the Board within one year from the date of the Board's decision. 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