



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

[REDACTED]
Docket No: 02914-16

[REDACTED]
Dear [REDACTED]

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 23 January 2017. 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 began a period of active duty in the Marine Corps on 31 December 1969. You served nearly six months without disciplinary incident. Between 25 July 1970, and 16 June 1971, you received five nonjudicial punishments (NJP) for various infractions included unauthorized absence (UA), drunk and disorderly conduct, sleeping on fire watch, absence from your appointed place of duty, and failure to obey a lawful order. On 4 November 1971, at special court martial proceedings, you were found guilty of violating Uniform Code of Military Justice, Article 122 (stealing) and Article 128 (assault). The Court sentenced you to confinement with hard labor for 6 months and forfeiture of \$95 pay per month for 6 months. On 8 June 1972, you received a sixth NJP for 18 days of UA. Five months later, on 22 November 1972, at a second special court martial, you were found guilty of violating Article 86 (failure to go to appointed place of duty), Article 91 (assault), and Article 113 (sleeping on post). The Court sentenced you to a reduction in rank, forfeiture of \$145 pay per month for 4 months, confinement at hard labor for 3 months, and a bad conduct discharge. Your bad conduct discharge was executed on 21 May 1973, and you were discharged from the Marine Corp on 17 August 1973. Your Certificate

of Discharge (DD 214) contained within your service record, with a discharge date of 17 August 1973, reflects an other than honorable characterization of service vice a bad conduct discharge.

The Board considered your request for an upgrade to your bad conduct discharge on the basis that you served your "full term" and that you have learned a lot from you life experiences. When making its determination, the Board noted that on 29 April 1977, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade to your bad conduct discharge. NDRB concluded that your record did not contain impropriety or inequity and your discharge should not be changed.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your statement that you served the United States to the best of your ability and that you do not agree with the bad conduct discharge. The Board noted that your record contains two court martial convictions and six NJPs, and that you were properly sentenced to a bad conduct discharge at the 22 November 1972 court proceedings. The Board found that the bad conduct discharge was issued without error or injustice, and was supported by the guilty findings at your second special court martial. The Board noted that your available DD 214 reflects an other than honorable discharge, and further concluded that the other than honorable discharge reflected was fully supported by the misconduct committed while you were on active duty. The Board determined that corrective action on your record to upgrade your discharge characterization as issued by the second special court martial or as reflected in the DD 214, was not warranted. Accordingly, your application has been denied.

In regard to your request for a personal appearance, be advised that the Board regulations state personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of the record.

It is regrettable 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,

[REDACTED]

Executive Director