



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

[REDACTED]  
Docket No: 3904-16  
APR 14 2017

[REDACTED]  
Dear [REDACTED]

This is in reference to your application for correction of your 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.

Regarding your request for a personal appearance, Board regulations state that 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 record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 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 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 Marine Corps and began a period of active duty on 29 January 2007. On 31 March 2010, you received nonjudicial punishment (NJP) for insubordinate conduct, failure to obey a lawful order, and drunken/reckless operation of a vehicle. On 11 February 2011, you received a second NJP for two instances of failing to obey a lawful order. On 14 March 2011, after entering a pre-trial agreement, you pled guilty and were convicted by special court-martial (SPCM) for conspiracy, three specifications of larceny, and transfer or use, without authority, a means of identification of another person to access and steal money from two Marines' bank accounts. You were sentenced to confinement, a reduction in paygrade, and a bad conduct


discharge (BCD). The BCD was subsequently approved at all levels of review, and on 22 February 2012, you were discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as the information you provided regarding the investigation and prosecution, your desire to upgrade your discharge as implied by the excerpts from MCO 1900-16 you referenced on your DD Form 149, and your post-service conduct. Specifically, the Board considered your contentions that Navy Federal Credit Union (NFCU) told your command that none of the recorded calls were made by you; that NFCU had been reimbursed prior to the Naval Criminal Investigative Service's investigation and had closed the case; the Federal Bureau of Investigation declined to pursue charges; two of the larceny charges were for money that had not been deposited into your account; your military job required daily access to a system and use of that system was used as evidence against you; no funds were actually withdrawn with respect to the larceny specification of \$975; and that your defense counsel told you, the day before accepting the Pre-Trial Agreement, that there was no defense to the charges if you went to General Court-Martial. The Board also considered the MCO 1900-16 excerpts and your pro/con marks.

However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the overall severity of your misconduct during your entire active duty service. The Board also noted that your court-martial conviction precluded the issuance of a fully honorable discharge under regulations in effect at the time. Although the Board cannot set aside a conviction, it may grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. Unfortunately, the Board did not find evidence of an error or injustice that warrants changing your BCD. Accordingly, your application has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon submission of new and material evidence. New evidence is evidence not previously considered by the Board. In this regard, it is important to keep in mind a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

  
Executive Director