



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

[REDACTED]
Docket No: 6633-16
DEC 07 2017

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, § 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 21 September 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, relevant portions of your naval record and applicable statutes, regulations and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 12 March 1996. Your record is incomplete, in that it does not contain all of the documents pertaining to your administrative discharge. Your record contains undated administrative remarks/Page 13 counseling you on the use of provoking speech or gestures and dereliction of duty. Per your statement, you also received nonjudicial punishment (NJP) for a verbal altercation in which you threatened to punch another sailor. Based on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that after being afforded all of your procedural rights, the separation authority directed separation under other than honorable (OTH) conditions by reason of misconduct due to pattern of misconduct and commission of a serious offense. You were discharged with an OTH characterization of service on 7 July 1997.

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. The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, immaturity, religious affiliation and upbringing in the Bronx where you "had a tendency to fight your own battles". The Board considered your contention that your misconduct resulted from racial discrimination, sea sickness you were suffering while underway, and taunting resulting from your lethargy and inability to work coupled with your dark complexion and religious affiliation. The Board also considered your contentions that your sea sickness warranted referral to medical to evaluate whether you were fit for duty, worldwide deployable or should be restricted to shore duty and/or considered for medical discharge. Additionally, the Board noted the article you provided regarding changes in Navy policy which allow medical conditions, primarily diagnosed mental health conditions, to take precedent when such medical conditions also contributed to misconduct leading to potential discharge. Lastly, the Board noted your post-service record as a personal trainer, nutrition consultant, security guard, and a peace officer and the numerous character letters provided on your behalf.

Upon review and consideration of all the evidence of record, the Board concluded your request does not warrant relief. The Board concluded your misconduct supported the commanding officer's decision to process you administratively for an OTH discharge. Additionally, as acknowledged in your letter to the Board, the policy discussed in the article has been applied to diagnosed mental conditions to protect members suffering from post-traumatic stress disorder, traumatic brain injury, and other diagnosed mental health conditions. Finally, there is no provision of federal law or in Navy regulations that allows for a discharge upgrade, recharacterization of service, or a change in SPD or narrative reason due solely to the passage of time. 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 the 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 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