



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

[REDACTED]
Docket No: 6877-16

NOV 16 2017

[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 5 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.

You enlisted in the Navy on 7 July 1948. During the period from 13 November 1948 to 26 April 1951, you received five non judicial punishments (NJP) for the following offences: unauthorized absence (UA), disobeying a lawful order, insolence, being out of uniform, and sleeping on watch. You were also convicted by three summary courts martial (SCM) of three specifications of unauthorized absence and missing ship's movement. You were sentence to confinement for 30 days, forfeiture of pay, and bad conduct discharge (BCD). However, the BCD was suspended for six months. On 28 November 1951, you were convicted by special court-martial (SPCM) of unauthorized absence for 8 days. You were sentence to confinement for 90 days and a BCD. After the BCD was approved by the Convening Authority and the Officer Exercising General Court-Martial Jurisdiction, you were in a UA status for three days. On 8 April 1952, the Navy Board of Review approved the sentence and directed discharge. On 12 May 1952, you were discharged.

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 carefully weighed all potentially mitigating factors, such as the counsel brief, your desire to upgrade your discharge and contentions that your counsel was inadequate at your SPCM and you were mistreated by your command due to your Italian-American heritage.

However, the Board found that these factors were not sufficient to warrant relief given your misconduct. In this regard, the Board concluded that the severity of your misconduct, which resulted in five NJPs, three SCMs, SPCM and a BCD, outweighed your desire to upgrade your discharge. Regarding your contention that your counsel was inadequate at your SPCM, the Board noted that the record clearly shows that the Navy Board of Review reviewed your case and affirmed the decision. The Board noted that there is no evidence in your record, and you submitted none, to support your contention of being mistreated by your command due to your nationality. In the end, the Board found your misconduct too serious to warrant upgrading your discharge. Accordingly, your application has been denied.

Finally, you made allegations that you received illegal punishment under the Uniform Code of Military Justice (UCMJ), and that those illegal punishments provide evidence that you were discriminated against. However, the UCMJ was passed by Congress on 5 May 1950 and did not take effect until 31 May 1951. Incidents of alleged misconduct occurring before this date were governed by the Articles for the Government of the U.S. Navy, which did allow for greater punishments than would be allowed when the UCMJ went into effect.

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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director