



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

[REDACTED]  
Docket No: 7360-16  
NOV 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 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 Marine Corps on 3 April 1972. During the period from 27 December 1972 to 12 March 1974, you received nonjudicial punishment (NJP) on two occasions. Your offenses were six specifications of making unauthorized long distance phone calls, disrespectful toward a Non Commission Officer (NCO), disrespectful in language to an NCO, disobeying a lawful order, disobeying a lawful regulation, and appearing in improper uniform. On 27 January 1975, you were convicted by special court martial (SPCM) of possession of marijuana. On 15 December 1975, you were convicted by civil authorities of three counts of robbery in the first degree using a deadly weapon. You were sentence to 27 years in the [REDACTED] State Department of Corrections. Subsequently, on 27 May 1976, administrative discharge action was initiated by reason of misconduct due to civil conviction. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB recommended an other than honorable (OTH) discharge by reason of misconduct due to a civil conviction. The discharge authority approved this recommendation and directed an other than honorable discharge by reason of misconduct. On 15 February 1977, 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


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Board carefully weighed all potentially mitigating factors, such as your desire to upgrade discharge and receive Department of Veterans Affairs (DVA) benefits, and contentions that you were young and immature, your discharge was unfair, you were not allowed to retain an attorney, the decision was wrong to help you to improve yourself, and you should be allowed to have a honorable discharge and be able to complete your full service in the Marine Corps.

However, the Board concluded that these factors were not sufficient to warrant relief in your case given the seriousness of your misconduct, drug possession and your civilian conviction. The Board also noted you signed ADB rights and elected to consult with legal counsel. In regard to your contention that your misconduct was the result of your youth, the Board felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. Also, the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions but did clearly support your misconduct. In regards to your contention of needing DVA benefits, whether or not you are eligible for benefits is a matter under the cognizance of the DVA, and you should contact the nearest office of the DVA concerning your right to apply for benefits. 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,



Executive Director