



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

[REDACTED]
Docket No: 7704-16
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 26 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, 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.

You enlisted in the Marine Corps on 10 October 1989. During the period from 1 August 1991 to 12 May 1992, you received two nonjudicial punishments (NJP) for the following offenses: larceny from another Marine, wrongful discharging a firearm in public, disorderly conduct, and wrongfully discharging a firearm that endangered human lives. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After you waived your procedural rights, your commanding officer recommended an other than honorable discharge (OTH) by reason of misconduct due to commission of a serious offense. The discharge authority approved and directed separation under other than honorable conditions by reason of misconduct. On 29 April 1993, 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 your desire to upgrade your discharge and contentions that your offences did not warrant an OTH discharge and you need Department of Veterans Affairs (DVA) benefits. However, the Board concluded that these factors were not sufficient to warrant relief in your case, given your misconduct.

In regard to your contention that your discharge was unfair because your offences did not warrant an OTH discharge, the Board noted that the record shows that you were notified of and waived your procedural right to present your case to an administrative board (ADB).

In doing so, you gave up your first and best opportunity to advocate for retention or a more favorable characterization of service. Accordingly, your application has been denied.

Regarding your contention that you need benefits from the DVA, whether or not you are eligible for benefits is a matter under the cognizance of the DVA. You should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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