




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


Docket No. 7869-16
SEP 27 2017



Dear 

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 U.S.C. §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 12 June 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. The advisory opinion provided in BUMED memo 5740 Ser M34/16UM36067 dated 20 April 2017 was sent to you on 25 April 2017 for an opportunity to comment prior to being considered by the Board. After the 30 day period for comment expired without a response, the case was presented to the Board.

You enlisted in the Navy and began a period of active duty on 31 May 1979. The Board noted that you re-enlisted in the Navy on 14 March 1984. On 24 April 1985, you were convicted at a special court martial (SPCM) for three specifications of wrongful use of marijuana, and two specification of being on unauthorized absence status from 26 February 1985 to 1 March 1985 and 6 March 1985 to 1 April 1985. The court martial sentenced you to confinement for 90 days and a bad conduct discharge from the Navy. As a result of the foregoing, you were discharged with a bad conduct characterization.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board, in its review of your record, and application with supporting documentation, to include your post service medical documentation from the University of Colorado with a diagnosis of Post-Traumatic Stress Disorder (PTSD), carefully weighed all potentially mitigating factors, such as your assertion of PTSD as a reason for your misconduct.

Your assertion of PTSD was considered by the Board in light of the Secretary of Defense's Memorandum "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post-Traumatic Stress Disorder" of September 3, 2014. The Board substantially concurred with the comments contained in the advisory opinion. Specifically, the Board noted that you did not specify the nature or time of the purported traumatic events and they were not specifically mentioned in the included records. You, additionally, did not provide sufficient evidence to support your assertion that PTSD may have existed during your active duty service. As a result, the Board was unable to conclude that PTSD existed at the time of your misconduct, and it was their opinion that the seriousness of your misconduct outweighed any mitigation that would be offered by the PTSD. 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, such as evidence of the traumatic event and of your behavior during active duty after the traumatic event. 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