



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

[REDACTED]
Docket No: 393-17

MAR 09 2018

[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, section 1552.

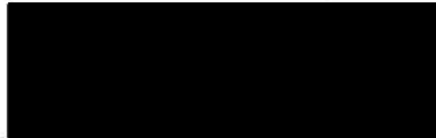
Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 February 2018. 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 and began a period of active duty on 30 October 1975. You served for 11 months without disciplinary incident, but during the period from 29 September 1976 to 21 January 1977, you received nonjudicial punishment (NJP) on two occasions. Your offenses were failure to go to your appointed place of duty, failure to obey a lawful order and unauthorized absence (UA) from your unit for 10 days. On 29 January 1977, you were UA from your unit until you were apprehended by civil authorities on 18 February 1977, a period of 20 days. On 24 February 1977 you were once again UA from your unit until you surrendered at [REDACTED] on 25 October 1978, a period of 608 days. On 7 November 1978, you made a written request for discharge for the good of the service to avoid trial by court-martial for a portion of the aforementioned periods of UA. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and the commanding officer directed your other than honorable (OTH) discharge. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 14 November 1978, you were discharged under OTH conditions.

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, including your contentions that your DD Form 214 is incorrect, that your rank should be E-4 and your length of service should be 12 February 1975 to 8 November 1979. The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your repeated misconduct that resulted in two NJPs, periods of UA totaling more than one year and nine months, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board noted that there is no evidence in your record, and you submitted none, to support your contentions that you obtained the rank of E-4 or that your time in service is incorrect. The Board in its review discerned no impropriety or inequity in the discharge. Accordingly, your application has been denied.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. 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 the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,



Executive Director