



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

[REDACTED]  
Docket No: 5324-17

JAN 03 2019

[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. 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. Consequently, your application has been denied.

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 (BCNR), sitting in executive session, considered your application on 16 October 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 on 31 August 1967. During the period from 29 April 1968 to 11 December 1969, you received three non-judicial punishments (NJP) for two specifications of unauthorized absence (UA) totaling five days, failure to be at your appointed place of duty, two specifications of disobeying a lawful order, and drunk and disorderly conduct. You were also convicted by special court-martial (SPCM) of UA totaling 34 days. On 23 December 1970, you submitted a written request for discharge for the good of the service to avoid trial by court-martial for 260 days 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 approved, and your commanding officer (CO) was directed to issue an other than honorable (OTH) discharge for the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 12 February 1971, you were discharged.

The Board carefully weighed all potentially mitigating factors, such as character letters submitted on your behalf, documentation of your medical conditions, and your desire to upgrade your discharge, as well as your contentions that you need Department of Veterans Affairs (DVA) benefits due to exposure to Agent Orange, that you went UA due to family hardship, and that you have been an exemplary citizen since being discharged. The Board, however, found that these factors were not sufficient to warrant relief in your case given your three NJPs, SPCM conviction, and request for a good of the service discharge in lieu of a trial by court-martial.

In regard to your contention that you were exposed to Agent Orange, 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. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

In regard to your contention that you went UA due to family hardship, the Board noted that there is no evidence in your record, and you submitted none, to support your contention. Regarding your contention that you have been an exemplary citizen since being discharged, the Board noted that, while commendable, your post-service conduct does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge.

In regard to your request (enclosed within your application) pursuant to the Freedom of Information Act (FOIA) and Privacy Act, the Board noted that your request failed to sufficiently identify the requested records, requested records that were not yet determined or in existence as of the date of your request, and/or requested records that were not then maintained—or in a system of records under the control of—the BCNR. You may renew your request by visiting <https://foiaonline.govfoiaonline/action/public/home>. Once your request is received, it will be processed accordingly.

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