



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 10464-07
19 September 2008

[REDACTED]

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 August 2008. 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, your naval record and applicable statutes, regulations and policies.

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 found that you enlisted in the Marine Corps on 31 July 1977. You incurred 444 days time lost during your enlistment, as a result of nine periods of unauthorized absence(UA), one period of confinement, and your incarceration by civil authorities. You received nonjudicial punishment on four occasions, for offenses that included UA, dereliction of duty, wrongful possession of marijuana, and failure to obey a lawful order, and were convicted by special court martial on 10 December 1975 of escape from correctional custody and three

periods of UA. On 29 July 1976, you were convicted by civil authorities of burglary, and sentenced to imprisonment for a period of one to five years.

On 1 October 1976, your commanding officer recommended that you be discharged by reason of misconduct/civilian conviction. On 15 November 1976, after being advised of your rights in connection with the proposed discharge, you acknowledged that you understood those rights, and waived your rights consultation with and representation by counsel, as well as consideration of your case by an administrative discharge board. You were discharged by reason of misconduct/civil conviction on 28 January 1977, with a discharge under other than honorable conditions.

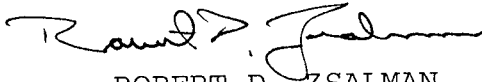
The Board concluded that the absence of the printed name, rank and official capacity of a witness from several discharge processing documents does not amount to a material error or injustice. The forms were completed and acknowledged by you and establish that that you were fully advised of your rights in connection with your proposed discharge. There is no indication in your application or the available records that you did not understand your rights.

The Board noted that although you had knee condition which may have rendered you unfit for duty, you were not entitled to be separated or retired by reason of physical disability, because your discharge by reason of misconduct took precedence over and precluded further disability processing in your case. Accordingly, and as you have not demonstrated that it would be in the interest of justice for the Board to upgrade your discharge, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter 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,

A handwritten signature in cursive script, appearing to read "Robert D. Zsalmán".

ROBERT D. ZSALMAN
Acting Executive Director