



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

BAN
Docket No: 05185-12
28 March 2013

[REDACTED]

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 March 2013. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You had prior honorable service in the Marine Corps from 1976 to 1979. You reenlisted on 31 May 1979, and served without disciplinary action until 23 April 1980, when you received nonjudicial punishment (NJP) for failure to obey a lawful order. Shortly thereafter, you received the following disciplinary actions: on 1 May 1980, you received NJP for breaking restriction; on 25 August 1980, you were convicted at a summary court-martial (SCM) of two specifications of disrespect; on 28 October 1980, you received NJP for two specifications of willful disobedience, failure to obey a lawful order, three specifications of sleeping on post, and two specifications of disorderly conduct in public; on 13 August 1981, you received NJP for disobeying a lawful order; and in February 1982, you were pending court-martial for disobeying a lawful order, possession

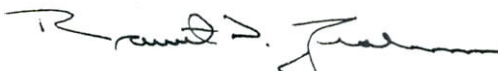
of a controlled substance (marijuana), drug paraphernalia, and unauthorized absence in excess of 13 days. You requested through counsel to be separated in lieu of a trial by court-martial with an other than honorable (OTH) characterization of service. At that time, you acknowledged the consequences of such a discharge.

Your request was granted and on 11 March 1982, you were separated with an OTH discharge and an RE-4 reenlistment code, in lieu of trial by court-martial. 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.

The Board, in its review of his entire record and application, carefully weighed all potentially mitigating factors, such as your claim of having epilepsy and prior honorable service. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge because of your serious misconduct 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 concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board was unable to find any evidence in your record to support your claim, and you provided no such evidence. Accordingly, 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 his 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,



ROBERT D. ZSALMAN
Acting Executive Director