



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

SJN
Docket No: 03686-13
24 April 2014

[REDACTED]

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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 22 April 2014. 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 enlisted in the Marine Corps and began a period of active duty on 30 April 1969. The Board found that on 30 January 1970, you were convicted by special court-martial (SPCM) of 80 days of unauthorized absence (UA). You were sentenced to confinement at hard labor and a reduction in paygrade. On 25 February 1970, you began another period of UA that lasted 146 days, ending on 21 July 1970, during a time of war. On 4 September 1970, you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for 146 days of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and on 8 January 1971, you received an undesirable discharge for the

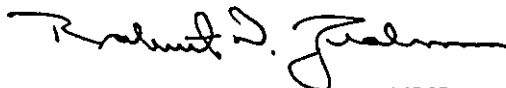
good of the service in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

On 20 June 1977 a panel of the Naval Discharge Review Board (NDRB), convened under the Special Discharge Review Program (SDRP) and upgraded your undesirable discharge to general under honorable conditions. Department of Veterans Affairs (DVA) benefits are not provided to those individuals whose undesirable discharges were upgraded under SDRP.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, record of service, legal documents pertaining to the expunging of your civil criminal records, and desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your misconduct that resulted in an SPCM conviction of a lengthy period of UA, charges being preferred to a court-martial for a period of UA totaling over four months, and request for discharge. Finally, the Board noted that you received a general discharge under the SDRP. However, neither the DVA nor the Department of Defense considers a general discharge issued by the SDRP to entitle you to any benefits denied by the original discharge. The Board concluded that a further change, which would make you eligible for DVA benefits, was not warranted. If you have been denied benefits, you should appeal that denial under procedures established by the DVA. 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 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,



ROBERT D. ZSALMAN
Acting Executive Director