



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

TJR
Docket No: 5291-13
30 May 2014



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 28 May 2014. 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, 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 reenlisted in the Navy after four years of prior satisfactory service. You continued to serve for about eight months without disciplinary incident, however, during the period from 9 April 1965 to 6 May 1968, you received nonjudicial punishment (NJP) on three occasions, were convicted by civil authorities, a summary court-martial (SCM), and special court-martial (SPCM) on three occasions. Your offenses were failure to obey a lawful order, five specifications of disobedience, using provoking language, insolence in language, insubordination, resisting apprehension, two specifications of assault, wrongfully wearing civilian clothes, carrying a concealed weapon, 31 days of unauthorized absence (UA), disrespect, communicating a threat, drunk and disorderly conduct, and petty theft.

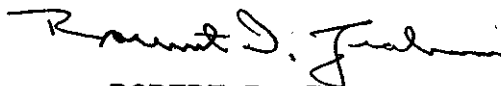
The record reflects that you wrongfully discharged a firearm, specifically, an M-16 rifle and communicated a threat to another Sailor. As a result of the foregoing misconduct, on 7 October 1968, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial. 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. On 11 October 1968, your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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 1968 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge, prior satisfactory service, and Vietnam service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in three NJPs, four courts-martial convictions, and conviction by civil authorities. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

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