



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

TJR
Docket No: 6920-13
31 July 2014

[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 29 July 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 enlisted in the Marine Corps, began a period of active duty on 30 September 1974, and served for about a year and three months without disciplinary incident. However, during the period from 1 December 1975 to 7 December 1977, you received nonjudicial punishment (NJP) on five occasions and were convicted by summary court-martial (SCM) and twice by special court-martial (SPCM). Your offenses were failure to obey a lawful order, breach of the peace, four specifications of disobedience, two periods of unauthorized absence (UA) totalling four days, absence from your appointed place of duty, two specifications of disrespect, drunk and disorderly conduct, communicating a threat, missing the movement of your ship, and failure to go to your appointed place of duty.

The record reflects that from 28 December 1977 to 3 January 1978, you were in a UA status for six days. However, the record does not reflect the disciplinary action taken, if any, for this misconduct. You were also UA from 5 to 17 January 1978 on two more occasions for nine days. As a result, you were referred for NJP, which you refused and requested trial by court-martial with the hopes of receiving a bad conduct discharge. Subsequently, you withdrew your request in lieu of being administratively processed for separation. Nonetheless, on 3 February 1978, you began another period of UA that was not terminated until 12 April 1978.

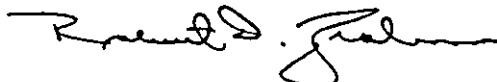
It appears that you requested discharge for the good of the service to avoid trial by court-martial for the latter period of UA totalling 78 days. Regulations required that before making such a request, an individual had to be advised by military counsel concerning the consequences of such a request. Since the record shows that you were discharged by reason of good of the service to avoid trial on 4 August 1978, the Board presumed that the foregoing occurred in your case. Because you requested discharge in lieu of trial, you avoided the possibility of a punitive discharge and confinement at hard labor.

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 and assertion of family and medical problems. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your repeated and lengthy periods of UA which presumably resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board further concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Finally, there is no evidence in the record, and you submitted none, to support your assertion. 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,

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

ROBERT D. ZSALMAN
Acting Executive Director