



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

TAL
Docket No: 4166-14
30 July 2015

[REDACTED]

Dear [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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application. 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 and began a period of active duty on 17 September 1985. About 10 months later, on 5 July 1987, you were the subject of an automobile accident. Your record reflects that you were driving while fatigued and under the influence of alcohol, speeding, and engaging in erratic driving (e.g., illegally passing in a no-passing zone on a hill and in the curve of the road, and not wearing a seat belt), when your automobile ran "head on" into a 9-ton truck. The record also reflects that because the foregoing misconduct was intentional or due to willful neglect, you were not eligible to receive disability benefits. Subsequently, a physical review counsel determined that your disabilities were not ratable due to your own misconduct and gross willful neglect.

On 12 December 1989, you were convicted by general court-martial (GCM) of two specifications of wrongful possession, distribution, and, use of methamphetamine. You were sentenced to confinement for 15 months, a \$5,250 forfeiture of pay, reduction to paygrade E-1, and a bad conduct discharge (BCD). Subsequently, the BCD was approved at all levels of review, and on 25 October 1991, you were so discharged.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your desire to upgrade and/or change your discharge to reflect a "medical retirement" status and change the record to reflect that your automobile accident "injuries occurred while you were in a line of duty." Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your alcohol and drug related misconduct. The Board determined that the severity of your drug and alcohol abuse, intentional misconduct, and willful neglect outweighed the mitigation of your desire to change your discharge. The Board also determined that there was no error in your record in regards to your injuries occurring while you were "not" in the line of duty. Accordingly, your application has been denied.

Regarding your request for a personal appearance, be advised that Board regulations state that personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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 within one year from the date of the Board's decision. 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 J. O'NEILL
Executive Director