





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


Docket No: 9201-07
2 May 2008


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 16 April 2008. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 8 August 1989. You underwent psychiatric evaluation on 3 December 1991, and were given diagnoses of drug and alcohol abuse, an eating disorder, and a personality disorder. On 12 February 1992 you received nonjudicial punishment for use and possession of marijuana.

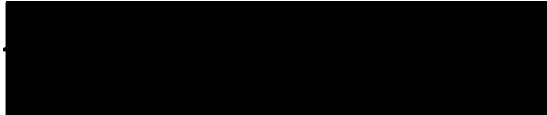
On 5 March 1992 your commanding officer recommended that you be separated from the Navy with a discharge under other than honorable conditions by reason of misconduct due to drug abuse. When informed of the recommendation, you waived the right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and on 19 June 1992 you were separated with a discharge under other than honorable conditions by reason of misconduct.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your performance while in the service, post service accomplishments and the contention that psychiatric problems impaired your ability to serve. The Board concluded that those factors are insufficient to warrant recharacterization of your discharge, given your involvement with

drugs. In addition, there is no indication that you did not know right from wrong and were unable to adhere to the right. 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,

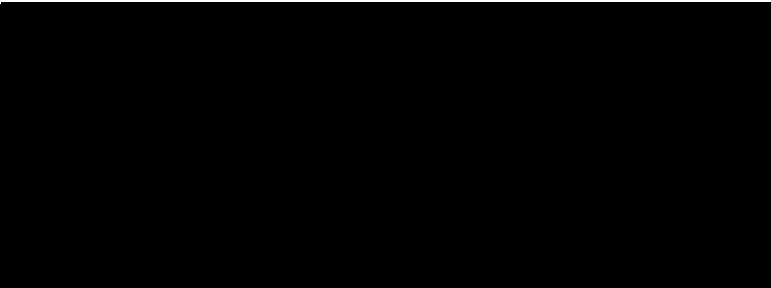
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ROBERT D. ZSALMAN
Acting Executive Director



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

HD:hd
Docket No. 10295-07
5 May 2008



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.

You requested restoration of your Navy Enlisted Classification (NEC) code 5352 (special warfare boat operator (SB)) and advancement to chief petty officer (CPO) (pay grade E-7) from the Cycle 182 (January 2004) advancement examination and CPO selection board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 May 2008. 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. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command (NPC) dated 31 January 2008 with enclosures and 24 March 2008, copies of which are attached. The Board also considered your letter dated 20 April 2008 with attachments.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to find your NEC was removed as a punitive measure. The Board recognized that your three fitness reports

from [REDACTED] for 3 June to 15 November 2004, 16 November 2004 to 15 November 2005 and 16 November 2005 to 20 July 2006, reflected no substandard work performance. However, the Board found enclosure (1) to the advisory opinion dated 31 January 2008 established a valid basis for your commanding officer's (CO's) loss of confidence in your ability to perform the duties required by the 5352 NEC, the misconduct for which you received nonjudicial punishment, even if your work performance was not substandard. The Board found that if you are correct that a service record page 13 specifying the basis for removing your NEC was not prepared, this would not be a material error invalidating the removal. Finally, enclosure (2) to the advisory opinion dated 31 January 2008 reflects that both the NPC and the [REDACTED] approved your CO's recommendation for revocation of your NEC.

The Board was unable to find your selection for advancement would have been probable, had you been given an opportunity to participate in the Cycle 182 (January 2004) advancement examination and CPO selection board. In this regard, the Board particularly noted that you have never been selected for advancement to CPO.

In view of the above, 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,

[REDACTED]

Executive Director

Enclosures



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON, TN 38055-0000

5420
BUPERS-32
31 Jan 08

From: Head Enlisted Community Manager
To: Executive Director, Board for Correction of Naval Records
Via: (1) BUPERS-3
(2) Assistant for BCNR Matters (Pers-31C)

Subj: [REDACTED]

Ref: (a) Military Personnel Manual Article 1220-340

Encl: (1) NSWG-4 Enlisted Personnel Action Request
(2) [REDACTED] 1221/2 NEC Action Form

1. Issue: [REDACTED] seeking reinstatement of his Navy Enlisted Classification (NEC) code for Special Warfare Boat Operator (SB) NEC 5352.

2. Background: [REDACTED] was removed by the Commanding Officer of [REDACTED] on 19 June 2006. As stated in Enclosure (2) [REDACTED] was removed after the Commanding Officer lost confidence in his ability to perform his duties as required of the 5352 NEC.

(a) [REDACTED] request for reinstatement was additionally reviewed by [REDACTED] see enclosure (1). The Commodore of [REDACTED] determined that [REDACTED] not suitable for any assignment within the Naval Special Warfare Community.

3. Recommendation: [REDACTED] Commanding Officer loss confidence in member's ability to perform his duties as required by the 5352 NEC. Per reference (a) the Commanding Officer has the authority to remove a member's NEC for lost of confidence. Recommend disapproval of [REDACTED] request for reinstatement of his Special Warfare Boat Operator (SB) NEC 5352.

[REDACTED]



DEPARTMENT OF THE NAVY
COMMANDER NAVAL SPECIAL WARFARE GROUP FOUR
2220 SCHOFIELD ROAD, SUITE 100
NORFOLK, VA 23521-2645

5863
Ser 004/007
22 Jan 07

From: ~~Commander, [REDACTED]~~
To: Commander, Naval Personnel Command (PERS 4011D7)

[REDACTED]

Encl: (1) NAVPERS 1306/7

1. Per reference (a), enclosure (1) is submitted with the strongest possible recommendation for disapproval.
2. This endorsement was delayed due to misunderstanding as to the characterization of the request and travel commitments of the [REDACTED] staff.

[REDACTED] accountable for his actions leading up to and during the incident that took place at the Texas Steakhouse in [REDACTED] on 2 June 2006. After careful review of the Preliminary Investigation and the Police Report, the facts corroborated both by the owner and his employee clearly suggested that [REDACTED] intentionally left the premises without paying his bill. Furthermore, his work performance as a [REDACTED] was amply documented by his chain of command as substandard. Not only has he lost my faith and confidence in his ability to train and lead his unit, but he has lost the faith and confidence of his chain of command, his peers, and the senior SWCC throughout the [REDACTED] [REDACTED] claimancy.

4. It is my final determination that [REDACTED] is not suitable for any assignment within the [REDACTED] Community. Therefore, I strongly recommend that his request be disapproved.

Encl (1)

[REDACTED]

5. Point of [REDACTED]
1371; C [REDACTED]

[REDACTED]

[REDACTED]

Copy to:

[REDACTED]



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1430

Ser 811/250

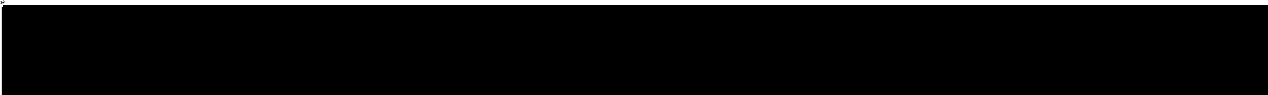
24 Mar 08

MEMORANDUM FOR CHAIRMAN, BOARD FOR CORRECTION OF NAVAL RECORD
Via: PERS-31C

Ref: (a) [REDACTED] DD Form 149 dtd 27 Nov 07
(b) BUPERSINST 1430.16F

Encl: (1) BCNR File

1. In response to reference (a), recommend disapproval to the petitioner's request.
2. The petitioner is requesting an opportunity to compete for advancement to chief petty officer from Cycle 182, January 2004 E7 advancement examination and CPO selection board.
3. The petitioner was eligible to participate in the January 2004 E7 advancement examination and CPO selection board. In order to be provided an opportunity for advancement from the cycle he missed, the member could have petitioned BCNR to backdate his advancement to Cycle 182 if he had been selected for advancement to E7 from Cycle 186, January 2005 advancement examination and selection board. However, the petitioner did not participate in the E7 advancement examination and CPO selection board in January 2005.
4. The petitioner competed in Cycle 190 January 2006 and Cycle 194 January 2007 advancement cycles and did not attain sufficient Final Multiple Scores on his examinations to be Selection Board Eligible for either selection boards. Additionally, he was not eligible to participate in the January 2006 and January 2007 advancement cycles since his advancement recommendation was withdrawn by his evaluation for the period ending 20 July 2006 and his recommendation for advancement was not reinstated until 15 November 2007, the ending period of his periodic evaluation. The petitioner was not eligible to participate in Cycle 198, January 2008 advancement cycle due to his High Year Tenure date of 31 July 2008.



5. In view of the above, recommend the petitioner be disapproved Cycle 182 January 2004 E7 advancement examination and CPO selection board consideration.

~~6. This is an advisory memorandum to reference (a) for the use by the Board for correction of Naval Records (BCNR) only.~~
Enclosure (1) is returned.

