



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

[REDACTED]  
Docket No: 3586-16/  
11539-15

MAY 29 2017

[REDACTED]  
Dear [REDACTED]

This is in reference to your reconsideration request received on 21 April 2016. You previously petitioned the Board and were advised in our letter of 5 August 1981, that your application had been denied. Your case was reconsidered in accordance with Board of Correction of Naval Records procedures that conform to *Lipsman v. Secretary of the Army*, 335 F.Supp.2d 48 (D.D.C. 2004).

Because your application was submitted with new assertions of error and injustice that were not previously considered, the Board found it in the interest of justice to review your most recent application. In this regard, your current request has been carefully examined by a three-member panel of the Board for Correction of Naval Records on 6 February 2017. The names and votes of the members of the panel will be furnished upon request. Documentary material considered by the Board consisted of your application, your medical record and any material submitted in support of your application.

After careful and conscientious consideration of the entire record, the Board determined that the statements and letter you provided, even though not previously considered by the Board, were insufficient to establish the existence of probable material error or injustice. In this regard, the Board considered your request for an upgrade to your other than honorable discharge from the Navy; the Board noted that you assert that your discharge occurred after a single positive drug test. You request that the isolated incident be taken into consideration and that your discharge be upgraded to general or honorable. The Board also considered your personal letter that requested information about the procedure for correction of a military record. You also raise issues of equity and due process, allege prejudice and sexual harassment, and assert that you should have been medically discharged or retired rather than separated on the basis of misconduct. Finally, you request legal representation from [REDACTED]

In response to your request for information on correction of a military record, your submission of Form DD 149, "Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552" to the Board is the proper avenue by which correction is sought. With respect to your request for [REDACTED] please note that our office does not detail counsel, except in

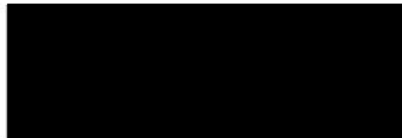
limited case of Whistleblower Protection Act BCNR cases. However, we do not have any evidence, other than your one statement in the attachment to your petition that your case involves the Whistleblower Protection Act. Additionally, [REDACTED] typically provides representation to a limited group of individuals and based on your status as a Veteran rather than a current servicemember or dependent, it is unlikely that you qualify for assistance. Your local Legal Assistance office may be able to best assist you with confirming the parameters of eligibility for [REDACTED]

The Board considered your assertions of error and injustice, as well as your personal statement and character letter from your minister. Nonetheless, the Board determined that you did not provide sufficient evidence to support your assertions. Specifically, no evidence of a disability was found in your medical records. Your medical record contains a message which reflects that you had two NJPs for drug use at your previous command and that you stated to your medical provider that you used marijuana once a week, socially. The Board found that the drug use reflected in your record was sufficient to warrant the other than honorable discharge characterization given the seriousness of drug use while in an active duty status. Accordingly, your application has been denied.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously considered by the Board. In the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

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,



Executive Director