



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

[REDACTED]
Docket No: 4299-16
JUN 07 2017

[REDACTED]
Dear [REDACTED]

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.

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 on 15 March 2017. 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.

You enlisted in the Navy and began a period of active duty on 10 July 1985. You served for four years and two months without disciplinary incident, but from 18 September 1989 to 19 March 1990, you received nonjudicial punishment (NJP) on two occasions. Your offenses were wrongful use of cocaine and driving under the influence (DUI) of alcohol with a blood alcohol content (BAC) of .226 percent. Subsequently, you were notified of pending administrative separation by reason of misconduct due to commission of a serious offense at which time you waived your procedural rights to consult with legal counsel and present your case to an administrative discharge board (ADB). Your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason misconduct, and on 22 May 1990, you were so discharged.

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. The Board, in its review of your entire record and application, carefully weighed all potentially

mitigating factors, and your contention that an OTH is extreme punishment for a DUI considering that you earned a Good Conduct Medal. The Board found that these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct that resulted in two NJPs, wrongful drug use in light of the Navy's policy of "zero tolerance," and violating an administrative warning. The Board noted that you waived your right to an ADB, your best opportunity for retention or a better characterization of service. In regard to your contention, the Board noted regulatory guidelines state that the administrative separation process encompasses the performance review of a Sailor's entire record. Finally, the Board determined that your desire to upgrade your discharge was not enough to outweigh the significant misconduct you committed. Regarding your concern about eligibility for healthcare whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA), and you should contact the nearest office of DVA concerning your right to reapply for benefits or appeal the earlier unfavorable determination. Accordingly, your application has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. 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 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 large black rectangular box redacting the signature of the Executive Director.

Executive Director