



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

[REDACTED]  
Docket No. 4391-16

FEB 13 2017

[REDACTED]  
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552. Your case was reconsidered in accordance with procedures that conform to *Lipsman v. Secretary of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). You were previously denied relief by the Board on 20 July 2011. However, a reconsideration of your case was directed by my predecessor on 17 May 2016 after you pointed out that it was unclear whether the Board had considered all of the advisory opinions provided in your case.

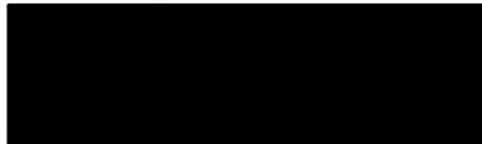
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 January 2017. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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. Additionally, the Board considered three advisory opinions contained in HQMC ltr 1070 JAM3 of 14 Sep 2010, HQMC ltr 1412/1 MMRP of 27 Oct 2010, and HQMC ltr 1741 MMSR-4 of 10 Nov 2010. Your rebuttal evidence submitted on 11 March 2011 was also considered by the Board.

The Board carefully considered your arguments that you deserve to have the non-judicial punishment issued on 21 April 2003 removed from your record, to be retroactively promoted to the paygrade CWO3, and placed on the disability retirement list. Unfortunately, the Board disagreed with your rationale for relief. Regarding your claim for a disability retirement, the Board substantially concurred with rationale used in the prior denial of your application. Specifically, you were found fit for duty by a medical board and during a pre-separation physical leading the Board to conclude that insufficient evidence exists to find that you were unfit for continued naval service due to a disability at the time of your discharge. The Board also determined that sufficient evidence exists to support the retention of the non-judicial punishment and administrative separation in your record. Despite your assertions that you suffered from symptoms and medication that affected your behavior, the Board was unable to find evidence to support a finding that you were not responsible for your misconduct. Further the Board was not persuaded by your arguments that your chain of command punished you based on a series of misunderstandings or that they colluded against you. The totality of the misconduct over several

days and the medical board finding of fit for full duty convinced the Board that you were responsible for your actions. Further, the Board noted that you were provided the due process required by law during your non-judicial punishment proceedings and administrative separation. This was additional evidence to the Board that your non-judicial punishment and separation was appropriate. Finally, regarding your request for retroactive promotion to CWO3, the Board substantially concurred with the advisory opinions contained in HQMC ltr 1070 JAM3 of 14 Sep 2010 and HQMC ltr 1412/1 MMPR of 27 Oct 2010. Based on the Board's determination that your non-judicial punishment and administrative separation was appropriate, it agreed with the opinions that no legal basis exists to promote you to CWO3 since you were properly separated prior to your promotion. Accordingly, the Board determined no error or injustice exists in your case. 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 evidence within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in this case. 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 redaction box covering the signature of the Executive Director.

Executive Director