



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

[REDACTED]
Docket No: 6515-16
NOV 16 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 our application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 August 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You reenlisted in the Marine Corps on 30 April 1988 after more than three years of prior service. On 3 March 1989, nearly a year after your reenlistment you were arrested on a civilian charge of driving under the influence of alcohol. During the period from 17 April 1989 to 14 August 1989 you received nonjudicial punishment on three occasions. Your offenses were failure to go to your appointed place of duty, willfully disobeying a lawful order from a commissioned officer, unauthorized absence (UA) from your unit for periods totaling 27 days, driving while your privileges were suspended or revoked, and insubordinate conduct toward a noncommissioned officer. On 29 August 1989, you tested positive for wrongful use of methamphetamine. On 21 October 1989, you were admitted to [REDACTED] Hospital in [REDACTED] after receiving numerous gunshot wounds. Subsequently, you were notified of pending administrative separation processing with an other than honorable (OTH) discharge by reason of misconduct. You elected to consult with legal counsel and subsequently requested an administrative discharge

board (ADB). The ADB found that you had committed misconduct and recommended that you should be discharged under OTH conditions by reason of misconduct due to drug abuse. The separation authority directed an OTH discharge by reason of misconduct due to drug abuse. On 28 February 1990 you were 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 contentions that another Marine's NJP was in your record and was used against you, you were subject to a lack of leadership, that you were given a day off by the Officer In Charge (OIC) and then charged with being UA, the Uniform Code of Military Justice (UCMJ) violations charged against you were not valid, that if there were drugs in your body you don't know how they got there because you used alcohol not drugs, and that you were suffering from post-traumatic stress disorder (PTSD), anxiety and alcoholism when you appeared before the ADB.

The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your repeated misconduct that resulted in three NJP's and wrongful drug use in light of the Marine Corps' policy of "zero tolerance." In regard to your contention that another Marine's misconduct was included as part of your record and used against you, the Board noted this error but determined, even without the erroneous NJP in your record, your three NJPs and positive urinalysis for wrongful use of methamphetamine were enough, to constitute a significant departure from the conduct expected of a member of the Marine Corps and would have been characterized as under other than honorable service. Your record clearly reflects that the NJP for being UA after being given the day off occurred because you failed to call your OIC to give an update on your health. When told you were to come to work after having to be contacted by your OIC, you did not report for work that day. The Board noted that the record contains documented evidence which is contrary to your contention that you did not use methamphetamine. The Board is not an investigative body and relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your allegations of lack of leadership and that your UCMJ violations were invalid are unsupported in the record and you did not supply any proof to overcome that presumption. Further, the Board concluded that there is no evidence in your record and you submitted none, to support your contention of any mental problems and by November 1989, your medical records noted your wounds were healing well and you would have been able to attend the ADB on 5 December 1989. 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.

Sincerely,



Executive Director