



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

[REDACTED]
Docket No: 7327-16

DEC 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, 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 21 September 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, relevant portions of your naval record, and applicable statutes, regulations, and policies.

You enlisted in the Navy and began a period of active duty on 30 July 1998. On 19 December 1998, you received nonjudicial punishment (NJP) for insubordinate conduct toward a petty officer and dereliction of duty. On 20 February 1999, you received a second NJP for insubordinate conduct toward a petty officer and malingering. Subsequently, administrative discharge action was initiated by reason of misconduct due to a pattern of misconduct. After you waived your procedural rights, your Commanding Officer recommended discharge under other than honorable (OTH) conditions by reason of misconduct due to a pattern of misconduct. The discharge authority approved this recommendation and directed separation under OTH conditions by reason of misconduct due to a pattern of misconduct. On 9 March 1999, 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. The Board considered your contention that you were a victim of hazing and were pinned down and abused during a golden shellback initiation. The Board concluded these factors were not sufficient to warrant relief in your case given the seriousness of your misconduct.

In this regard, the Board concluded the severity of your misconduct outweighed your desire to upgrade your discharge and clearly supported the Commanding Officer's decision to issue you an OTH discharge. The Board also noted your DD Form 214 indicates you were properly separated without an administrative discharge board (ADB). By waiving your procedural right to present your case to an ADB, you gave up your first and best opportunity to advocate for retention or a more favorable characterization of service. Finally, there is no provision of federal law or in Navy regulations that allows for a discharge upgrade, recharacterization of service, or a change in a reentry code due solely to the passage of time. 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

[REDACTED]

Executive Director