



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

[REDACTED]  
Docket No. 7666-16

NOV 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 24 July 2014.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 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. In addition, the Board considered the advisory opinions contained in Director CORB letter 5220 CORB: 002 of 1 August 2017 and your rebuttal. However, after careful and conscientious consideration of the entire record, the Board determined that while your request does contain new information not previously considered by the Board, it does not warrant relief. Accordingly, your request has been denied.

The Board carefully considered your arguments to warrant referral of your case through the Disability Evaluation System for consideration of a disability discharge or retirement. You raised a number of arguments regarding the Navy's failure to provide sexual assault support services to you including mental health treatment, medical evaluation, and transition services. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion contained in Director CORB letter 5220 CORB: 002 of 1 August 2017. Specifically, the Board concluded there was insufficient evidence to support a finding that you were unfit for continued naval service due to a disability at the time of your discharge. SECNAVINST 1850.4E provides the standard to be used in making determinations of physical disability as a basis for retirement or separation. A service member must be unfit to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating. The

Board considered your performance prior to your discharge and your post discharge civilian employment in determining whether you were able to perform the duties of your office, grade, rank or rating at the time of your discharge. Despite your argument that you were performing menial duties prior to your discharge, your performance evaluation ending 13 April 2004 states otherwise. The evaluation comments note that you served as storeroom custodian responsible for 8,000 line items valued over \$50,000 and managed the storage of over 500 aircraft parts; performing all your duties in an excellent manner and contributing significantly to the success of your work division. This was strong evidence of fitness for duty that convinced the Board you were capably performing duties within your rate despite any disability symptoms that you may have been experiencing. Further the Board considered the high level of performance you exhibited post-discharge in your civilian employments. Your civilian salary generally increased from 2004-2008 culminating with earnings of \$102,000 in 2008. This evidence convinced the Board you successfully performed in your civilian employments for approximately four years after your discharge. Taken in conjunction with your documented superior performance prior to your discharge, this evidence convinced the Board you did not suffer any occupational impairments at the time your discharge to warrant your referral to the Disability Evaluation System. While the Board was sympathetic to your current condition and the sequence of events that may have contributed it while you were on active duty, they did not feel an error was committed with regard to the Navy's decision to discharge you. The fact the Navy may not have offered you proper support and transition services for your sexual assault, while probative on the issue of whether an injustice exists, was not conclusive evidence on the issue of whether an error exists in your record regarding your unfitness for continued naval service prior to your discharge.

Regarding whether the circumstances of your case warrant a change to your record based on an injustice, the Board again found no basis for a change. The evidence shows that you were provided a choice whether to remain in the Navy or separate and chose the latter. In the haste to grant you your desired separation, the Navy likely did not provide you the ideal amount of support you needed. However, prior to your separation, you were seen by medical personnel in January 2004 for your mental health symptoms and twice transferred away from hostile environments for your protection. In the Board's opinion, the Navy did not mistreat you and your commands attempted to mitigate the misconduct that had been committed against you by prosecuting your assailant, removing you from situations that affected your safety, and granting you the discharge you requested. Based on these findings, the fact you may have been denied additional counseling or transition services prior to your discharge was insufficient evidence of an injustice, in the Board's opinion, to warrant granting you military disability benefits for which you did not qualify. Accordingly, the Board determined no error or injustice exists in your case.

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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,

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Executive Director

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