



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

[REDACTED]
Docket No. 8111-16
DEC 18 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 this Board on 29 April 2015 and 16 June 2016.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 November 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 Senior Medical Advisor CORB ltr 1856 CORB: 002 of 13 Jul 2017, Director CORB ltr 1856 CORB: 001 of 13 Jul 2017, Senior Medical Advisor CORB ltr 1910 CORB: 002 of 20 Oct 2017, and Director CORB ltr 1910 CORB: 001 of 23 Oct 2017 along with your rebuttal comments and evidence. 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.

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.

The Board carefully considered your arguments that you were suffering from a number of disability conditions that made you unfit for continued naval service due to a disability. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions in your case despite the extensive rebuttal evidence you provided. Specifically, the Board determined that the evidence does not show that any disability conditions from which you may have been suffering from prior to your

discharge created an occupational impairment sufficient to find you unfit for continued naval service. They based their finding on your successful post-discharge career as a corrections officer and fire fighter that provided strong evidence your claimed disabilities did not impact your abilities to perform duties that were physically and emotionally strenuous. This led the Board to conclude that you would have been able to perform the duties of your office, grade, rank or rating at the time of your discharge. In addition, the Board concluded that you would have been ineligible for disability processing due to the misconduct that resulted in your court-martial conviction and punitive discharge. As pointed out in the last decision letter issued by this Board, despite the 3 April 2015 medical opinion that you were insane at the time of your misconduct, the Board concluded you were mentally responsible for your misconduct in 1990 and 1993 that led to both of your court-martial convictions. The lack of any medical diagnoses supporting the 2015 medical opinion of insanity despite a number of medical screenings that occurred between your 1989 automobile accident and 1993 general court-martial conviction convinced the Board that the 2015 medical opinion is contradicted by the evidence in your military record. The Board felt you clearly lost emotional control prior to your 1993 misconduct but did not meet the legal definition of legal insanity for escaping criminal responsibility. The due process you were afforded through the criminal justice proceedings further convinced the Board that evidence of your claimed insanity would have been identified had it existed at the time of your trial. As such, the Board determined you were responsible for your misconduct, properly processed for misconduct, and, therefore, ineligible for disability processing.

Regarding your request for an upgrade to an Honorable characterization of service, the Board again concluded that a change was not warranted. Taking into consideration your diagnoses for Post-Traumatic Stress Disorder (PTSD) and applying the applicable departmental policies regarding liberal consideration for upgrades to characterization of service in PTSD cases, the Board felt your misconduct was far too serious to be offset by your PTSD diagnosis. Based on the facts of your case, you seriously assaulted an individual with a 9mm pistol causing a skull fracture and lacerations to the victim's wrist. Setting aside the orders violation regarding the possession of the 9mm weapon, the Board felt this criminal behavior could easily have resulted in death or maiming of the victim. The severity of the 1993 court-martial sentence imposed on you supports the Board's conclusion that this misconduct was dangerous and extremely serious. Further, the Board also considered the fact this was your second assault involving a dangerous weapon. So the fact you were twice convicted by courts-martial for assaults involving dangerous weapons led the Board to find that your bad conduct discharge is appropriate despite the mitigation offered by your PTSD diagnosis.

Since the Board concluded that your 1993 court-martial conviction and sentence were appropriate. It also concluded the Marine Corps properly denied payment of your leave balance and moving expenses after your bad conduct sentence was issued. The Board determined the Marine Corps acted consistent with the service regulations regarding payment of benefits for Marines separated from active duty pursuant to a punitive court-martial sentence. In addition, the Board felt your request to change derogatory remarks from your record were unsupported for the same reasons, i.e. regulations allowed for those comments based on your behavior.

Finally, the Board felt it had insufficient evidence to support a retroactive change to your enlistment contract. Despite your assertion that the Marine Corps recruiter engaged in

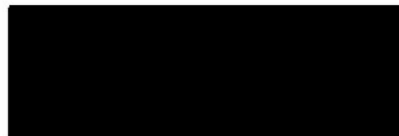
misconduct by changing the length of your contract, this was unsupported by the evidence in your record. The Board relied upon the fact you signed your enlistment contract and never raised any documented complaints to your chain of command. Therefore the Board relied upon the presumption of regularity to determine the Marine Corps recruiter properly discharged his duties. Accordingly, the Board determined no error or injustice exists in your case.

The Board determined your requests to add college and correspondence courses along with your new last name to your military record were not ripe for Board adjudication. Board regulations require service members to exhaust their administrative remedies prior to applying to the Board. So you may submit your request to the MMRP-13, 2008 Elliot Road, Quantico VA 22134-5030 to request the administrative corrections be made to your record. If you remain unsatisfied with the Marine Corps response to your request, you may reapply to this Board with evidence that an error or injustice exists with your military record.

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,



Executive Director

