



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

BJG
Docket No: 3737-13
16 July 2014

[REDACTED]

[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.

It is noted that you allege that you filed an Article 138 Uniform Code of Military Justice complaint of wrongs for which you have not received a response. It is recommended that you contact the command where you filed the complaint to find out the results.

You requested removal of a nonjudicial punishment (NJP) held on 28 May 2008, retirement in the rank of commander (pay grade O-5), and removal of two fitness reports for 5 October 2006 to 18 April 2007, and for 17 August 2007 to 8 January 2008.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 July 2014. 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.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was

insufficient to establish the existence of probable material error or injustice.

On 28 May 2008, you received NJP for larceny, wrongful appropriation and fraud against the United States government. You accepted NJP rather than requesting trial by court-martial. You were found guilty and did not appeal. Your punishment was a punitive letter of reprimand.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your counsel's contention that the NJP was in error because you did not have the necessary intent to commit larceny and defraud the government. The Board found that you were given the opportunity to consult with counsel prior to accepting your NJP. The Board concluded that you have failed to prove an error or injustice in the imposition of the NJP and it shall remain in your official military personnel file. Regarding your counsel's contention concerning the NJP, the Board particularly noted that you did not appeal the guilty findings and that you knew that you did not use a taxi to muster when you submitted your travel claim.

Concerning counsel's allegation that your waiver of your right to demand trial by court-martial was invalid because your military lawyer refused to form an attorney-client relationship with you, the Board found that you are not entitled to have a military attorney represent you at NJP.

Regarding counsel's contention that you waived a Board of Inquiry in exchange for a promised recommendation of retirement in the pay grade of O-5, the Board found that in your Voluntary Retirement Request dated 19 February 2010, you agreed that the Secretary of the Navy (SECNAV) could retire you in a lesser pay grade, and that your retirement grade would be the highest grade in which you served satisfactorily. The Board further found that you committed the misconduct in pay grade O-4, so it agreed with SECNAV's determination that the last pay grade in which you served satisfactorily was O-3.

Concerning counsel's allegation that the contested fitness report for 5 October 2006 to 18 April 2007 should have been not observed, the Board found that the reporting senior (RS) believed he had sufficient information to render an observed report. The Board found no requirement for your RS to conduct mid-term counseling. If you wish to submit a rebuttal statement to this report, please send it to the Navy Personnel Command (PERS-311), 5720 Integrity Drive, Millington, Tennessee 38055-3110. Regarding counsel's contention that you should have had a fitness report upon the detachment of the previous commanding

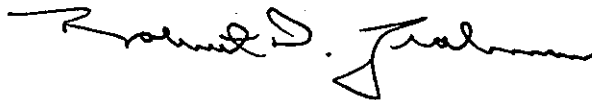
officer, you may wish to contact him and request that he submit a report to PERS-311.

concerning counsel's allegation that your adverse fitness report for 17 August 2007 to 8 January 2008 was erroneous and unjust, the Board particularly noted that you did not submit a rebuttal statement to it.

Since the Board found no basis to remove the NJP or fitness reports, it had no basis to advance you on the retired list to pay grade O-5. In view of the above, your application has been denied. 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 and material evidence or other matter 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,



ROBERT D. ZSALMAN
Acting Executive Director

Copy to:

