



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

[REDACTED]
Docket No: 02945-16/

08260-11

APR 18 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your reconsideration request received on 31 March 2016. You previously petitioned the Board and were advised in our letter of 17 March 2012, that your application had been denied. Your case was reconsidered in accordance with Board of Correction of Naval Records procedures that conform to *Lipsman v. Secretary of the Army*, 335 F.Supp.2d 48 (D.D.C. 2004).

Although your application was not filed in a timely manner, your application was submitted with a new basis for relief not previously considered. Specifically, you state that during your 27 days in the brig, you were abused at the hands of the Marine guards. The Board found it in the interest of justice to consider your statement and the information you provided in support of your current application. In this regard, your request has been carefully examined by a three-member panel of the Board for Correction of Naval Records on 26 January 2017. The names and votes of the members of the panel will be furnished upon request. Documentary material considered by the Board consisted of your application and any material submitted in support of your application.

After careful and conscientious consideration of the entire available record and the information you provided with your current request, the Board determined that the abuse you suffered during your confinement, even though not previously considered by the Board, is insufficient to warrant an upgrade to your other than honorable service characterization. The Board noted that you enlisted in the Navy on 4 August 1977, and were discharged on 24 April 1981, with an other than honorable discharge on the basis of misconduct due to frequent involvement. While on active duty, you received four nonjudicial punishments (NJP) and one summary court martial conviction for unauthorized absence and breaking restriction. You were confined for 27 days following your summary court martial conviction; during your confinement you were physically abused by the guards. The Board noted the abuse you suffered, but found that your other than honorable discharge was based on your own misconduct. The Board found that the four NJPs and summary court martial conviction were sufficient to warrant the other than honorable characterization of service, despite the deeply unfortunate treatment you suffered at the hands of the guards. A review of your recent application reveals that again your request must be 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.

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