



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

[REDACTED]
Docket No: 3063-16
SEP 06 2017

[REDACTED]
Dear [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 June 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, your naval record, and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinion (AO) provided by Navy Personnel Command (PERS-32) dated 17 January 2017, as well as your rebuttal statement dated 1 March 2017.

Following a Naval Criminal Investigative Service (NCIS) investigation, the Commanding Officer, [REDACTED] conducted a Conduct Hearing on 28 April 2014 and found you guilty of entering a restricted area, being under the influence of a substance which brings discredit upon the Naval Service, and assault. On 30 April 2014, you appealed the punishment awarded on the grounds that insufficient evidence exists. On 12 May 2014, the CO, [REDACTED] forwarded your appeal and recommended disapproval. The basis for his findings was the NCIS investigation, your guilty plea of being under the influence, you did not offer any rebuttal or defense to the charges, and made no comments in regards to the events and circumstances which led to the charges. The Staff Judge Advocate (SJA) reviewed the findings and awards and found them appropriate. On 15 May 2014, the Superintendent, US Naval Academy (USNA) denied your appeal of punishment, stating that you were afforded all procedural rights, the CO, [REDACTED] had a basis in regulation and fact and the punishment awarded was appropriate and was neither unjust nor disproportionate to the offenses committed. Consequently, you were issued a Detachment of Individual/Regular Evaluation ("contested Eval") for the reporting period 30 June 2013 to 23 May 2014 and dis-enrolled and transferred from the [REDACTED]. The contested Eval documented, in part, your violations and grade point average (GPA) of 2.58 earned while attending the [REDACTED].

The Board considered your desire to have the contested Eval removed from your official military personnel file (OMPF). The Board considered your argument that the contested Eval contains erroneous and misleading information regarding your cumulative grade point at the [REDACTED] and references the outcome of an adjudicative process that failed to follow applicable command instructions and was conducted in violation of the Uniform Code of Military Justice. Specifically, you were denied your right as an active duty sailor to refuse the hearing and demand trial by court-martial, the CO's adjudication was a proceeding that is not permitted by law, and you were not afforded due process.

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. In this regard, the Board noted that you voluntarily admitted your actions "were against the Navy Core Values in which I am required to uphold and live by." The Board noted that after the findings were found appropriate by the SJA, the Superintendent, USNA denied your appeal of punishment awarded. He stated that you were afforded all procedural rights, that the CO, [REDACTED] had a basis in regulation and fact, that the punishment awarded was appropriate and was neither unjust nor disproportionate to the offenses committed. The Board further noted that attendance at the [REDACTED] is a privilege, not a right, and your dis-enrollment was well within CO's and Superintendent's discretionary authority. Finally, the Board noted that you did not submit official transcripts to verify your contention that your GPA in the contested Eval is incorrect. Accordingly, your application has been denied.

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. 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