




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


Docket No. 3465-16
JUL 03 2017



Dear 

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 23 November 2015.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 June 2017. 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 contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 22 March 2017; a copy of which was provided to you for comment. 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 names and votes of the members of the panel will be furnished upon request.

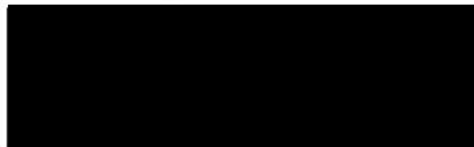
The Board carefully considered your arguments that you deserve a disability discharge with a change to your discharge date along with a promotion to E5. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion despite the arguments you raised in your rebuttal. The Board concluded that even if you had been referred to the Disability Evaluation System, you likely would have been found fit for continued active duty and administratively separated for the same basis you were discharged. The Board relied upon the medical finding by your treating physician that removed you from Limited Duty Status in 2002 approximately six months prior to your discharge. The notation by the physician that your condition had significantly improved and did not warrant a continuation on Limited Duty convinced the Board your condition did not create a substantial occupational impairment sufficient to warrant your referral to the Physical Evaluation

Board. The fact you were determined not to be deployable did not persuade the Board that your condition was unfitting since SECNAVINST 1850.4E states inability to screen for a deployment, overseas or sea duty assignment does not justify referral to the Physical Evaluation Board. While the Board understood your frustration with the process of losing your career due a condition that was not considered a disability, the Board concluded no error or injustice exists in your case. Finally, based on their finding that you were properly discharged by the Navy, the Board concluded your request for service credit and a promotion was not warranted.

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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director