



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

[REDACTED]
Docket No: 3533-16

MAY 26 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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 February 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.

You enlisted in the Navy and began a period of active duty on 20 November 1980. You attended the ten week, basic Hospital Corps School, and graduated on 9 April 1981. Two months after graduation on 7 July 1981, you received nonjudicial punishment (NJP) for wrongful use and possession of marijuana. On 14 July 1981, your designation as a Hospital Corpsman (HN) was withdrawn. During the period from 7 January 1982 to 9 September 1983, you received NJP on four occasions. Your offenses were failure to obey a lawful order, assault, failure to go to your appointed place of duty, making a threat, wearing an improper uniform, and wrongful use of marijuana. On 23 November 1983, your recommendation and nomination for designation in the Personnelman (PN) rating was withdrawn, due to disciplinary problems.

Subsequently, you were notified of pending administrative separation by reason of misconduct due to a pattern of misconduct at which time you waived your procedural rights to consult with legal counsel and to present your case to an administrative discharge board (ABD). On 15 December and 27 December 1983, you received NJP on two separate occasions for failure to go to your appointed place of duty and failure to obey a lawful order. Your commanding officer forwarded his recommendation to the separation authority that you should be discharged under other than honorable (OTH) conditions by reason of misconduct due to a pattern of misconduct and stated in part that, "despite repeated counseling concerning the consequences of SA Murrell's continued non-adherence to Navy policy and regulations, he persists in misconduct.

SA Murrell has been given ample opportunity to turn himself around and become an asset to the Navy, but decided not to take advantage of the opportunities." You again received NJP on three additional occasions from 14 January 1984 to 14 March 1984, for unauthorized absence (UA) from your unit for a period of 10 days, failure to obey a lawful order, making a threat, wearing an improper uniform, absence from your appointed place of duty, and using disrespectful language toward a noncommissioned officer. The discharge authority approved the commanding officer's recommendation and directed separation under other than honorable conditions by reason of misconduct. On 2 April 1984, you were so discharged.

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. The Board carefully weighed all potentially mitigating factors, and your contentions that you were discriminated against while you were an undesignated Personnelman striker, and that your command should not have allowed you to separate with an alcohol problem. The Board concluded these factors were not sufficient to warrant relief in your case because of your serious repeated misconduct that resulted in 10 NJPs and wrongful drug use. The Board noted that you waived the right to an ADB, your best opportunity for retention or a better characterization of service. Regarding your contentions, the Board noted that there is no evidence in your record, and you submitted none, to support your contention of discrimination. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Finally, there is no evidence in the record and you submitted none, to support your contention of alcohol abuse. Even if alcohol abuse existed at the time of your service, such abuse is not an excuse for misconduct and you were responsible for your actions. Your allegations, unsupported in the record or by submission of documentation failed to overcome the presumption of regularity. Accordingly, your application has been denied.

Regarding your concern about eligibility for healthcare whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA), and you should contact the nearest office of DVA concerning your right to apply for benefits.

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,

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

Executive Director