



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

[REDACTED]
Docket No: 3812-16

OCT 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 31 July 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, relevant portions of your naval record, and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You began a period of active duty in the Marine Corps Reserves in 2003, and served satisfactorily through 2006. On 11 September 2007, you were involved in a vehicle accident; you were not on military duty at the time of the accident. Your service in the Marine Corps Reserves declined after the accident and was unsatisfactory in 2007 and 2008. On 8 May 2009, Commanding General, [REDACTED] Group recommended your administrative separation on the basis of unsatisfactory participation. You were discharged from the Marine Corps Reserves on 8 May 2009, with an other than honorable characterization of service. You received a reentry (RE) code of RE-4. Your service record indicates that on 9 May 2009, you had 44 total unauthorized absences, with 22 days missed, and 14 days of active duty training and 8 days of inactive duty training.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material or injustice.

On 7 June 2017, the Bureau of Medicine and Surgery (BUMED) provided an advisory opinion (AO) regarding a review of your application for an upgrade to your discharge characterization and a change to your RE-4 code. The AO considered your assertion that you suffered from a brain injury from the vehicle accident that led to your unsatisfactory performance. The AO opined that based on the preponderance of evidence there is insufficient evidence to support your contention that your brain injury contributed to your inability to comply with military standards. You were provided the AO and given 30 days in which to provide a response or a rebuttal. After the 30-day period passed without any action by you, the matter was taken to the Board.

The Board considered your request for an upgrade to your other than honorable discharge characterization and a change to your RE-4 code. When making its determination, the Board considered your statement that before the vehicle accident your service was above satisfactory. The Board also considered that since you were released from the Marine Corps, you have had several significant hardships.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such the injury you suffered while serving in the Marine Corps. The Board also considered the supplemental information you provided in support of your application to include character letters, post-service awards and documents, your marriage license and your daughter's birth certificate, hospital records supporting your contentions, and a letter from Congressman [REDACTED]. The Board reviewed the AO and your service record as well, and noted that the 44 total unauthorized absences (22 days missed) supported the issuances of an other than honorable discharge characterization. The Board considered the medical documentation you provided, but concurred with the AO and determined there was insufficient evidence that you suffered from a traumatic brain injury that impacted your ability to comply with military performance standards. The Board concluded that you did not provide a sufficient basis to find an error or injustice in your record that supported changing your RE-4 code or upgrading your discharge characterization. Accordingly, your application has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. 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 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,



Executive Director