



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

[REDACTED]
Docket No: 4361-16/
542-13/11921-11

DEC 20 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your reconsideration request received on 12 May 2016. You previously petitioned the Board on two separate occasions and were advised in our letters of 22 August 2012 and 27 February 2013, that your applications 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).

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your most recent application based on the new evidence provided. In this regard, your current request has been carefully examined by a three-member panel of the Board for Correction of Naval Records on 16 October 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, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies.

Your contention that you suffered from Post-Traumatic Stress Disorder (PTSD) and a Traumatic Brain Injury (TBI) was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014 and the "Clarifying Guidance to Military Discharge Review Board and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" memorandum of 25 August 2017.

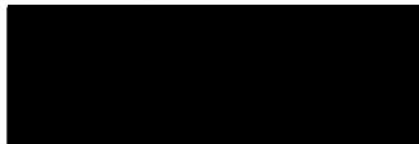
After careful and conscientious consideration of the entire available record, the Board determined that the statements you provided, even though not previously considered by the Board, were insufficient to establish the existence of probable material error or injustice. In this regard, the Board considered your statement that you suffered a fall in 1989, which resulted in PTSD and TBI. You contend that the PTSD and TBI contributed to your misconduct and caused your other than honorable discharge from the Marine Corps on 23 August 1989. The Board noted that you did not provide information that reflected service-connected PTSD or a service-

connected brain injury. The Board considered that you began a period of active duty on 29 September 1986, and had three disciplinary incidents before the head injury in 1989. You received an NJP (breach of peace) in 1987, a summary court martial (underage drinking, assault, false official statement, drunk and disorder, and obstruction of justice) in 1988, and a second NJP (disrespectful language) in 1988. In 1989, you received a second summary court martial (striking a fellow Marine, disobeying a lawful order, disrespectful language, and disorderly conduct), and an NJP (absence from appointed place of duty). The Board reviewed the nature of your misconduct before 1989, and found that it was similar (breach of peace, assault, disrespect) to the type of behavior you exhibited in 1989 (disorderly conduct, striking fellow Marine, disrespectful language). The Board gave liberal consideration to your claim of TBI and PTSD, but concluded that your other than honorable discharge was warranted. The Board based its decision on the fact that you did not provide medical information establishing a service-connection of TBI or PTSD, and because your misconduct began before the injury and does not appear to have changed significantly after the injury. Accordingly, your application has been 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