



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

[REDACTED]
Docket No. 4425-16
MAY 26 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 U.S.C. 1552.

Although your application not filed in a timely manner, the Board found in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 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.

Regarding your request for a personal appearance, the Board determined that the 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 enlisted in the Navy and began a period of active duty on 24 October 2002. On 28 October 2003, you were issued an administrative counseling and warning for going to Executive Officer's Inquiry (XOI) on 28 August 2003 for the offense of unauthorized absence. On 6 February 2004, you received nonjudicial punishment (NJP) for the offense of dereliction of duty, your reduction in rate was suspended for 6 months. You received punishment part of which was suspended for six months. On 13 February 2004, your suspended punishment was vacated due to continued misconduct. On 4 April 2004, you went into an unauthorized absent status from the command and did not surrender to authorities until 17 May 2005. On 22 June 2005, you were issued an administrative counseling and warning, which you signed and acknowledged stating that you were not eligible for reenlistment due to pending administrative separation in lieu trial by court-martial.

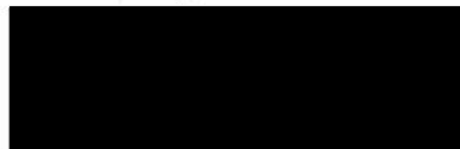
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Although the Board lacked your entire Official Military Personnel File (OMPF), it appears from available records in the OMPF that on 22 June 2005, after being afforded all of your procedural rights your Commanding Officer subsequently discharged you with an under other than honorable conditions discharge and a narrative reason for separation in lieu of trial by court-martial.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board carefully weighed all potentially mitigating factors, such as your contention that you were discharged because you went AWOL because of family reasons. However, the Board concluded that these factors were not sufficient to warrant relief in your case given the seriousness of your pattern of misconduct that culminated in a lengthy UA. The Board also noted that as a result of this OTH request, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The Board determined that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. 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