



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

[REDACTED]  
Docket No: 7530-16

DEC 20 2017

[REDACTED]  
Dea [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 22 November 2017. The names and votes of the member 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 enlisted in the Marine Corps and began a period of active duty on 9 May 2005. You served for three years and seven months without disciplinary incident, but on 9 January 2009, you were convicted by general court-martial (GCM) for negligent homicide, wrongful use of marijuana and failure to obey a lawful general order. You were sentenced to confinement, a forfeiture of pay, reduction in paygrade and a bad conduct discharge (BCD). The BCD was approved at all levels of review and on 27 January 2010, you were 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, including your contention that you were diagnosed with post-traumatic stress disorder (PTSD) and depression after the accident and

that was not taken into account. The Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct that resulted in a GCM. In regard to your contention the Board has no authority to consider contentions pertaining to improprieties in courts-martial and must limit its review to determining clemency. Accordingly, your application has been denied.

Your assertion of PTSD was 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 Requests by Veterans Claiming Post-Traumatic Stress Disorder" of September 3, 2014. The memorandum provides supplemental guidance to assist these Boards in reaching fair and consistent results when considering whether medical or other evidence indicates PTSD may have contributed to or mitigated the circumstances of a veteran's discharge from the military. In reviewing a veterans request to change the characterization of service, the memorandum instructs Boards to give liberal consideration to service treatment or other records documenting symptoms now recognized as PTSD existed during the time of service. Liberal consideration is also given to a civilian medical provider that is supported by information that PTSD symptoms existed at the time service. Board did consider your recent diagnosis of alcohol dependence, PTSD, and poly-substance dependence (in remission). However, the Board concluded that the statements you provided and the PTSD diagnosis did not significantly mitigate the seriousness of your misconduct while on active duty. The Board concluded that the seriousness of your misconduct outweighed any mitigation that would be offered by the PTSD.

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,

[REDACTED]  
Executive Director

[REDACTED]