



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

Docket No. 201-17  
MAR 14 2018

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552. Your case was reconsidered in accordance with procedures that conform to Lipsman v. Secretary of the Army, 335 F. Supp. 2d 48 (D.D.C. 2004). You were previously denied relief by this Board on 29 June 2016.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 February 2018. 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. The advisory opinion provided in HQMC memo 7220 MPO dated 4 April 16 was sent to you on 12 May 2016 for an opportunity to comment prior to being considered by the Board. A copy of this advisory opinion is again enclosed. As part of your reconsideration request you provided additional information, which was included in your record and presented to the board.

After careful and conscientious consideration of the entire record, it has been determined that the Board for Correction of Naval Records (the Board) cannot provide the requested relief. The Post-9/11 Veterans Education Assistance Act (Post 9/11 GI Bill, Public Law 110-252), effective 1 August 2009, is a Department of Veterans Affairs (VA) program. 38 U.S.C. §3319 establishes the program, and requirements for transferability are further delineated in MARADMIN 389/09 and MARADMIN 421/09. To successfully transfer education benefits, a service member must commit to the prescribed period of additional obligated service. This service obligation cannot be waived by the Board, as it is outside of the scope of the Board's authority. Even if the Board corrected your record to reflect that you successfully submitted your transfer of education benefits (TEB) request while on active duty or the Select Marine Corps Reserve SMCR) between the program initiation date of 1 August 2009 and your discharge from the SMCR on 12 March 2010, the record would still show that you did not complete the four year additional service obligation from the date of approved TEB. Failure to complete the obligation period results in the denial of your TEB request. Although the advisory opinion stated that your record

indicates that you may not have received the required program counselling, it does not impact the Board's lack of authority to grant relief. The only remedy in your case is to reenlist in the SMCR or on active duty, submit your TEB request, and complete the four year service obligation. The Post 9/11 GI Bill is a retention tool, which is why additional service is required from the point of an approved TEB request. It is not within the authority of the Board to grant your request, therefore, your request is 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

