



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

Docket No. 632-17
DEC 13 2017

Dear [REDACTED]

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

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 November 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.

You began a second period of service on 28 April 2008. You served for seven years without disciplinary incident, but on 11 September 2015, you were found guilty at Summary Court Martial (SCM) for violating UCMJ, Article 92 (Failure to Obey Lawful General Order (OPNAVINST 5370.2C, Navy Fraternization Policy)). Your case was subsequently heard by an administrative separation (ADSEP) board on 10 December 2015. By unanimous vote, the Board found that misconduct had occurred but recommended retention in the service. However, due to the severity of your misconduct, the [REDACTED] forwarded your case to the Assistant Secretary of the Navy (ASN) (Manpower and Reserve Affairs) recommending separation with a General (GEN) characterization of service. ASN concurred with the discharge recommendation and on 26 April 2016, you were discharged with a GEN characterization of service for "Misconduct (Commission of a Serious Offense)" with a RE-4 reentry code.

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 considered your argument that because you were not found guilty of dereliction of duty at SCM, the [REDACTED] focus on your role as the command Drug and Alcohol Programs Advisor (DAPA) was misguided. The Board also considered your assertion that your failure to follow OPNAVINST 5370.2C was associated with your consumption of an

alcoholic beverage during a command softball game with the entire team. However, the Board did not agree with your rationale for relief. The Board concluded that your separation was legally sufficient. Per MILPERSMAN 1910-710, in the event an ADSEP Board finds misconduct but recommends retention, the separation authority (SA) can forward the case to the Secretary of the Navy via the Navy Personnel Command recommending separation for one of the specific bases of misconduct found by the ADSEP board. The Board concurred with the SA and with ASN that due to your violation of OPNAVINST 5370.2C while in the role as DAPA, your separation from the service was proper.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as the ADSEP board's recommendation of retention, your period of satisfactory service, and your desire to overturn your discharge. The Board concluded that these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct. The Military Personnel Manual (MILPERSMAN), Section 1910-304, dictates that a GEN characterization of service is warranted when the quality of the member's service has been honest and faithful; however, significant negative aspects of the member's conduct or performance of duty outweighed positive aspects of the member's service record. MILPERSMAN, Section 1160-030, dictates that members reenlisting in the Navy must be recommended by the member's commanding officer for reenlistment. An RE-4 reentry code is assigned when a member is not recommended for reenlistment by their commanding officer and/or when the member is found guilty of misconduct at a court martial, as in your case. The Board concluded that your separation from the service with a GEN discharge and RE-4 reentry code was appropriate based on the circumstances involved in your case.

The Board carefully also considered your request to remove the evaluation dated 14SEP16-15JUL31 and the evaluation dated 15AUG01-15SEP15. First, you argued that the evaluation dated 14SEP16-15JUL31 should be removed because it was issued prior to the SCM's finding of guilty. However, the Board did not agree with your assertion that the issuance of this evaluation was in error. There is not prohibition against issuing a fitness report prior to a case's review at court martial. Further, the evaluation did not state that you were found guilty of dereliction of duty, rather it generally addressed your misconduct. Finally, an evaluation is an administrative tool as opposed to a judicial tool, therefore, there is no standard of evidence attached to an evaluation that is otherwise required at a court martial. The Board also disagreed with your argument that the evaluation dated 15AUG01-15SEP15 should be removed, as you were assigned to temporary duty (TAD) during the entire reporting period. The Board found that the issuance of an evaluation by the parent command while a sailor is TAD is in compliance with applicable regulations. 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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director