



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

[REDACTED]
Docket No. 4994-17

NOV 29 2017

[REDACTED]
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 the Board on 7 March 2016.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 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. However, after careful and conscientious consideration of the entire record, the Board determined that while your request does contain new information not previously considered by the Board, it does not warrant relief. Accordingly, your request has been denied.


The Board carefully considered your arguments that you deserve a disability discharge based on the Navy's decision to allow you to enlist despite your previous head injury from April 2002. You allege that you likely suffered from brain damage and were not fit for continued naval service. Unfortunately, the Board disagreed with your rationale for relief. The Board found no evidence you suffered from brain damage that created an occupational impairment while you were on active duty and required your referral to a medical board. Additionally, the Board was unable to find any evidence you were not mentally responsible for the misconduct, unauthorized absences and wrongful use of marijuana, for which you were convicted at Summary Court-Martial on 10 December 2004 and formed the basis for your administrative separation. Due to these two findings, the Board determined the Navy properly processed you for misconduct based on your court-martial conviction and issued a characterization of service appropriate for the misconduct you committed. In determining that insufficient evidence of a disability exists, the Board considered the medical findings of your entrance physical that showed you did not suffer

any head fractures from your accident and were released from the hospital after a CT scan determined you were medically cleared for release. Additionally, the Board concluded that your ability to complete basic training showed the lack of any occupational impairment due to any disability condition. Finally, the Board considered the fact that, even if there was evidence of a disability warranting your referral to a medical board, your misconduct processing would have made you ineligible for disability processing based on the disability regulations. So the fact you applied for Social Security Supplemental Income based on your 2002 injury was not persuasive to the Board. Accordingly, the Board determined no error or injustice exists in your case.

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