



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

[REDACTED]
Docket No: 5095-17/
8750-15

JAN 3 2019

[REDACTED]
Dear [REDACTED]

This is in reference to your latest reconsideration request dated 6 June 2017. You previously petitioned the Board and were advised in our letter that your applications had been disapproved. Your case was reconsidered in accordance with Board of Correction of Naval Records procedures that conform to *Lipsman v. Secretary of the Army*, 335 F.Supp. 2d 48 (D.D.C. 2004). 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. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board for Correction of Naval Records, sitting in executive session on 2 October 2018. The names and votes of the members of the panel will be furnished upon request. 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 presented as evidence a personal statement and documentation from the Department of Veterans Affairs (DVA). After careful and conscientious consideration of the entire record, the Board determined that the documentation that you provided, even though not previously considered, was insufficient to establish the existence of probable material error or injustice.

In regard to your contention that you were not told that you were to return for further service at the conclusion of your disciplinary process, the Board noted that the record contains documented

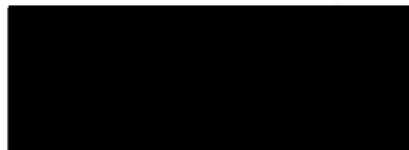
evidence that is contrary to your contention. The record clearly shows that, on 9 June 1994, you were notified by your commanding officer that you were being recommended for an other than honorable discharge due to drug abuse. On 8 July 1994, you requested leave (including leave without pay and allowances) pending completion of your administrative separation case. Specifically, you acknowledged that you understood you were to remain on administrative leave until you were finally separated unless you were ordered to return to naval custody by proper authorities. The Board noted that there is no evidence in your record, and you submitted none, to support your contention that you were not notified or expected to return for further service.

In regard to your contention that you served four years honorably before being discharged, the Board noted that, although a Sailor's service is generally characterized at the time of discharge based on performance and conduct throughout the current enlistment, the conduct or performance of duty reflected by a single incident of misconduct may provide the basis of characterization of service. Moreover, generally, characterization under OTH conditions is warranted for misconduct.

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,

A solid black rectangular box used to redact the signature of the Executive Director.

Executive Director