



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

[REDACTED]
Docket No: 5317-17

JAN 3 2019

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, section 1552. 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.

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 16 October 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.

You enlisted in the Marine Corps on 1 November 1982. On 30 January 1985, you received non-judicial punishment (NJP) for wrongful use of marijuana. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you waived your procedural rights, your commanding officer (CO) recommended that you be discharged under other than honorable (OTH) conditions by reason of misconduct due to drug abuse. The discharge authority approved this recommendation and directed your separation under other than honorable conditions by reason of misconduct due to drug abuse. On 19 March 1985, you were discharged.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and your contentions that you only had one incident of misconduct in two years, were young and immature, have been an asset to society since being discharged, and need Department of Veterans Affairs (DVA) benefits. The Board, however, concluded that your violation of the Navy's policy of "zero tolerance" outweighed your desire to upgrade your discharge.

In regard to your contention that you only had one incident in two years, 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.

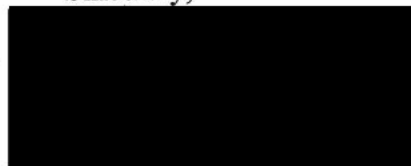
Regarding your contention that you were young and immature when discharged, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. The Board also noted that the record shows that you were notified of and waived—after consulting with counsel—your procedural right to present your case to an administrative board (ADB). In doing so, you gave up your first and best opportunity to advocate for retention or a more favorable characterization of service.

In regard to your contention that you have been an asset to society since been discharged, the Board noted that, while commendable, your post-service conduct does not excuse your conduct while enlisted in the Navy or the basis for your discharge.

In regard to your contention that you need DVA benefits, whether or not you are eligible for benefits is a matter under the cognizance of the DVA, and you should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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