



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

[REDACTED]
Docket No. 5622-17
JAN 03 2018

[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 9 June 2016.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 December 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.

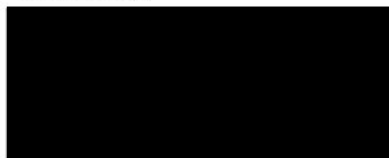
The Board carefully considered your arguments that you deserve a change to your narrative reason for separation to disability due to your diagnoses for adjustment disorder and other mental conditions. Unfortunately, the Board again disagreed with your rationale for relief. As pointed out in the Board previous denial letter, adjustment disorder is not considered a qualifying disability under the service disability regulations. So the Board focused on your other mental conditions as well as the cancer diagnoses for which you are receiving treatment. First, under Title 10, United States Code, Sections 1201 and 1203, a member of the Navy Reserve is authorized to be considered for a disability retirement or separation if the disability was incurred in the line of duty while entitled to basic for a period of 30 days. In your case, the Board lacked evidence that your claimed disability conditions were incurred in the line of duty during a period of active duty. While the Board noted that you were mobilized in 2002 and 2005 in support of Operation Noble Eagle, the Board had no evidence your conditions were incurred or aggravated during these periods of active duty. Second, in order to be found unfit for continued naval service, a member must be unable to perform the duties of office, grade, rank or rating because of disease or injury incurred while entitled to basic pay. The Board examined your performance

evaluations during your two aforementioned mobilizations and concluded there was insufficient evidence to support a finding that you were unfit for continued naval service at the conclusion of either of those two periods. In 2002, you earned a 3.86 trait average with positive comments that accompanied a promotable recommendation. Similarly, in 2005, you earned a 3.0 trait average with positive comments and a promotable recommendation. In both of these performance evaluations you were performing at or above the required standard of acceptable performance. Therefore, the Board could not find any performance based evidence that suggested you were suffering from an occupational impairment, due to a disability condition, that prevented you from performing the duties of your office, grade, rank or rating. So the fact you have a 2017 diagnoses for various disability conditions was not sufficient evidence to convince the Board of your qualification for military disability benefits. 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,

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

Executive Director