



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

Docket No. 6624-17

NOV 26 2018

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 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 case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 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. In addition, the Board considered the advisory opinions contained in Senior Medical Advisory CORB ltr 1910 CORB: 002 of 21 Aug 18 and Director CORB ltr 1910 CORB: 001 of 29 Aug 19 and your response to the opinions.

A review of your record shows that you entered active duty with the Navy in October 2001. By April 2002, you were experiencing difficulties with your coworkers that led you to make superficial cuts to your wrist. As a result, you were diagnosed with an adjustment disorder. Approximately two weeks later, non-judicial punishment was imposed on you for a period of unauthorized absence. Later that year, you commenced another period of unauthorized absence that resulted in you missing ships movement on two occasions. In addition, you tested positive on an urinalysis for marijuana use and admitted to wrongful drug use. As a result of your misconduct, you were convicted at a summary court-martial on 14 February 2003 and notified of administrative separation processing for misconduct. You were discharged with an Other than Honorable characterization of service on 5 March 2003 and issued a RE-4 reentry code based on your history of misconduct. On 28 December 2004, the Naval Discharge Review Board (NDRB) denied your request to upgrade your characterization of service and reinstate you to active duty. Post-discharge, it appears you held several jobs while eventually earning a bachelor's degree in

accounting. You were also diagnosed with Post-Traumatic Stress Disorder (PTSD) in 2010 that led to the Department of Veterans Affairs (VA) eventually issuing a 100% disability rating in 2011. On 2 December 2016, this Board upgraded your characterization of service to General under honorable conditions based on your PTSD diagnosis that was found to exist during your period of active duty.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list or be referred to a medical board based on a history of abuse while in the Navy and PTSD diagnosis. In addition to asserting that you were unfit for continued naval service at the time of your discharge from the Navy, you argue that the Department of Defense policy of liberal consideration for mental health conditions in correction board cases necessitates a finding by this Board in favor of relief. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions contained in Senior Medical Advisory CORB ltr 1910 CORB: 002 of 21 Aug 18 and Director CORB ltr 1910 CORB: 001 of 29 Aug 19. Specifically, the Board found insufficient evidence that you were unable to perform the duties of your office, grade, rank or rating at the time of your discharge as a result of a mental health condition. In addition, the Board determined that you were mentally responsible for your drug abuse and misconduct making you ineligible for Disability Evaluation System processing. First, despite the fact you may have been suffering from PTSD in 2003, the Board was not convinced that you were unfit for continued naval service at the time of your discharge from the Navy. Evidence shows that you were employed multiple times until at least 2009. In addition, albeit online, you were able to successfully complete a course of study and earn a bachelor's degree in accounting. Both of these factors led the Board to conclude that you were likely capable of performing the duties of your office, grade, rank or rating in 2003. Additionally, the Board considered the fact you believed yourself capable of returning to active duty when you applied to the NDRB in 2004. This was additional evidence that led the Board to conclude it lacked evidence to support a finding of unfitness for continued naval service in 2003. Second, the Board determined that you were ineligible for disability benefits based on your administrative separation for misconduct. Again, the Board relied on your NDRB application in which you described the circumstances of your unauthorized absence that led to you missing ships movement along with your wrongful drug use. The fact you acknowledged that you committed the misconduct and understood the wrongful nature of it was convincing evidence to the Board that you were fully aware of your actions and the related consequences. Based on this finding, the Board concluded you were mentally responsible for your misconduct and the Navy appropriately processed you for misconduct. Since you were processed for misconduct, the Board also concluded that you were ineligible for disability processing based on disability regulations that directed misconduct processing to supersede disability processing. Finally, the Board considered the VA issued disability rating for PTSD in determining whether it was appropriate to grant you military disability benefits. The Board determined the VA ratings was not probative on the issue of fitness for continued naval service based on two reasons: the length of time between your discharge and the VA's findings along with the fact the VA issues disability rating based on establishment of service connection without a requirement that unfitness for military duty be demonstrated. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

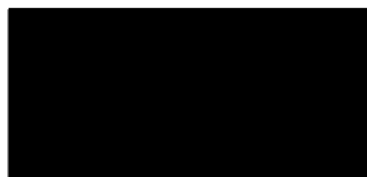
In examining your record, the Board found discrepancies between your assertion of serving as an "openly gay" servicemember that resulted in your alleged mistreatment and your record. The Board noted a service record entry that indicates you were married to your wife on 5 July 2002. In addition, your NDRB application describes you happily spending time with your wife in December 2002 during a period of leave. Both record entries indicate you were married to a woman; a fact that was officially recorded in your Navy record. The Board determined this was somewhat inconsistent the premise you were mistreated based on your sexual orientation as an "openly gay" servicemember. Despite this discrepancy that raised concerns about the veracity of your story of abuse and, ultimately, the primary basis for your PTSD diagnosis, the Board provided you the benefit of doubt in considering whether you qualified for military disability benefits. The Board found you suffered from PTSD at the time of your discharge and applied the Department of Defense guidelines regarding liberal consideration of mental health conditions in deciding your case. Despite applying liberal consideration in your case, the Board decided it still lacked the evidence to grant you disability benefits based on the findings described above. They felt there was too much evidence that supported findings that you were likely either fit for active duty or ineligible for disability benefits to grant you the relief you were seeking.

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.

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,

11/26/2018



Executive Director

Signed by:

