



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

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Docket No: 5001-20

Ref: Signature Date

Dear ■■■■■

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application was denied.

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.

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, sitting in executive session, considered your application on 14 October 2020. 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 Navy and began a period of active duty on 2 November 1995. On 3 November 1995, you were issued a retention warning for Fraudulent Enlistment, due to your failure to disclose traffic tickets. On 7 April 1998, you were convicted at a Special Court-Martial (SPCM) of Sodomy. Subsequently, administrative separation action by reason of Misconduct due to Commission of a Serious Offense was initiated against you. On 19 May 1998, your Commanding Officer recommended your administrative separation with a General characterization of service. On 20 May 1998, the Separation Authority directed your administrative separation with a General characterization of service, and you were so separated

the same day. On 28 October 2004, the Naval Discharge Review Board denied an upgrade of your discharge.

You requested an upgrade of your discharge to Honorable. You stated the discharge was in error and unjust due to you being forced out and not given any acceptable options. You also asserted that the incident occurred outside of base and you weren't given any options. The Board concluded these factors and assertions were not sufficient to warrant a change to your misconduct, which resulted in a SPCM conviction.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

12/11/2020

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Executive Director

Signed by: █