



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. 5065-21
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted 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, sitting in executive session, considered your application on 28 October 2021. 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.

A review of your record shows that you entered active duty with the Navy in January 1994. Non-judicial punishment was imposed on you in July 1995 for a period of unauthorized absence. In February 1996, non-judicial punishment was again imposed on you for two periods of unauthorized absence, missing ship's movement, and failure to obey a lawful order. As a result of your misconduct, you were notified of administrative separation processing for commission of a serious offense and discharged on 23 March 1996 with an Other than Honorable characterization of service. Prior to your release from active duty, you were medically cleared for separation. Post-discharge, you provided a curriculum vitae documenting years of successful employment in a number of different professions including firefighting, emergency response, mechanical work, and contractor work in Afghanistan.

The Board carefully considered your arguments that you deserve a change to your narrative reason for separation to disability, upgrade of your characterization of service to General, and reinstatement to paygrade E-4. You argue that you suffered from medical conditions related to your exposure to Aqueous Film Forming Foam (AFFF) while on active duty and were mistreated by your command based on their belief you may be malingering. Unfortunately, the Board disagreed with your rationale for relief.

First, the Board found no error with the Navy's decision to administratively process you for commission of a serious offense based on your documented non-judicial punishments for missing ship's movement and failure to obey a lawful order. The Board noted that these offenses qualified as serious offenses

under the Uniform Code of Military Justice based on the severity of their authorized punishments. When considered with your other misconduct, the Board concluded that your administrative separation was supported by the preponderance of the evidence.

Second, based the above finding, the Board also concluded you did not qualify for disability processing. Disability regulations at the time of your discharge dictated that misconduct processing must supersede disability processing if an Other than Honorable characterization is authorized. Therefore, the Board determined you were properly discharged for misconduct regardless of the existence of any disability conditions you may have possessed at the time. However, in reviewing your record, the Board was also unable to find sufficient evidence to support a finding that you were unable to perform the duties of your office, grade, rank, or rating at the time of your discharge from the Navy. Further, in examining your post-discharge employment history, the Board concluded the preponderance of the evidence shows that you were fully capable of performing a multitude of occupations, including in a combat environment, that were similar to your Damage Controlman rating. As a result, the Board found that the preponderance of the evidence did not support a finding you were unfit for continued naval service at the time of your discharge from the Navy for misconduct regardless of your exposure to AFFF.

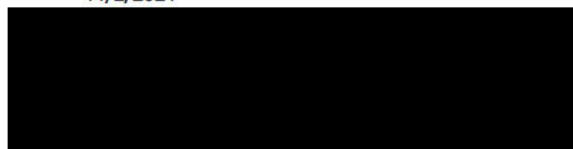
Third, the Board determined the preponderance of the evidence supports your reduction to E-3 as part of your 20 February 1996 non-judicial punishment. You provided no evidence that you did not commit the misconduct that formed the basis for your punishment and the severity of your misconduct supports your reduction in paygrade. The Board concluded that unauthorized absences, missing ship's movement, and an orders violation is inconsistent with a service member authorized to wear the rank of Petty Officer. As such, they found your reduction in rank appropriate based on your misconduct. In making this finding, the Board found no evidence to support a finding that you were not mentally responsible for your misconduct. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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,

11/2/2021

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Deputy Director

Signed by:

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