



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

██████████
Docket No. 5830-21
Ref: Signature Date

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Dear Petitioner:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 2 June 2022. 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. The Board also considered the 28 September 2021 advisory opinion (AO) furnished by Navy Personnel Command (PERS 32); the 26 January 2022 AO furnished by Navy Personnel Command (PERS-803); and the 9 November 2021 AO furnished by Navy Personnel Command Office of Legal Counsel (PERS-00J), your rebuttal response, and the PERS-00J supplemental AO response of 15 April 2022.

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

The Board carefully considered your request for reinstatement to active duty with retroactive reinstatement of all entitlements, removal of an adverse evaluation report & counseling record (EVAL) and issuance of a letter of continuity, removal of all related derogatory information from your Official Military Personnel File (OMPF), and advancement to E-5 with a recalculation for advancement to establish time in rate.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

Before applying to this Board, you exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

From 20 July 2017 to June 2018, you were counseled on ten separate occasions for personal behavior, substandard appearance, violations of Article 92 of the Uniform Code of Military Justice (UCMJ), and numerous instances of failure to report to your appointed place of duty at the prescribed time and/or leaving your appointed place of duty prior to the end of that duty.

On 22 June 2018, after your absence from a divisional service dress white inspection, your Leading Petty Officer immediately submitted a Report of Offense to have your case sent to the Disciplinary Review Board (DRB). After it was discovered that you attempted to submit a letter on command letterhead to your apartment's leasing office, an additional charge of violating Article 107 of the UCMJ was added to the DRB package. On 19 July 2018, DRB recommended adjudication by nonjudicial punishment (NJP) and as a result, a preliminary inquiry (PI) was ordered.

By memorandum of 3 October 2018, the PI Investigating Officer recommended you also be charged with a violation of Article 92 after showing complete disregard for an order given to you by [REDACTED]

On 15 November 2018, you refused adjudication of the charges at NJP and were subsequently notified of the intention of Commanding Officer (CO), [REDACTED], to administratively process you for separation by reason of misconduct due to commission of a serious offense as evidenced by your false official statement and your failure to obey an order/regulation. You were notified that the least favorable characterization possible was general, under honorable conditions. You elected review of your administrative separation (ADSEP) by the general court-martial convening authority (GCMCA).

In your 29 November 2018 statement to the GCMCA, you provided background information reflecting your love for the Navy and a detailed explanation of the incident that led to your ADSEP processing. By memorandum of 10 January 2019, the CO recommended Commander, [REDACTED] separate you on the basis of commission of a serious offense with a general characterization of service. The CO noted that you demonstrate a complete lack of the Navy core values of honor, courage, and commitment; attempted to circumvent the Navy's ability for service members to break their leases; disobeyed a direct order from YNCS; attempted to turn in a "by direction" letter believed to be signed; and "has several counseling's related to personal conduct."

On 1 February 2019, the separation authority, Commander, [REDACTED], directed your discharge with a general, under honorable conditions, character of service.

On 19 March 2019, you were discharged with a general characterization of service by reason of misconduct due to commission of a serious offense and assigned a RE-4 (not recommended for reenlistment) reentry code. You were issued an adverse EVAL for the reporting period 16 June 2018 to 19 March 2019, with a trait average of 2.50 and a promotion recommendation of "significant problems."

On 30 July 2020, the Naval Discharge Review Board (NDRB) changed your characterization of service to “honorable,” your narrative reason for separation to “Secretarial Authority” with a corresponding separation code of “JFF” and your reentry code to “RE-1” (recommended for reenlistment). The NDRB concluded that, given the fact pattern, and in consideration for the exceptional positive comments and markings you received, your discharge was improper and warranted relief.

The Board considered your contention you should not have been discharged from the naval service. As supporting evidence, you submitted the NDRB decision letter. The Board also considered your contentions that your unjust discharge resulted in medical, mental, and financial hardship, including six missed opportunities for advancement. The Board also considered your expressed desire to continue your career in the Navy with minimal impact from this matter. The Board noted you initially only submitted a DD Form 149 and a copy of the NDRB decision document. After the PERS-00J repeatedly noted in its AO the need to review the evidence submitted to the NDRB, in your rebuttal to the 9 November 2021 AO, you submitted the same documents for consideration by this Board.

The Board, however, substantially concurred with the PERS-00J supplemental AO. In this regard, the Board noted the NDRB’s determination, that your discharge was unjust, was unsupported by the evidence. The Board further noted the NDRB decision is not controlling on this Board. Additionally, the Board noted the CO’s rationale for administratively separating you, specifically the CO’s reliance on the “several counselings related to personal conduct.” After a thorough and proper review of the available evidence, to include the advocacy letter submitted by CO, [REDACTED], this Board concluded sufficient evidence existed to warrant your ADSEP and the resulting issuance of an adverse EVAL and inclusion of derogatory material in your OMPF.

Based on the available evidence, the Board concluded there was insufficient evidence of an error or injustice to warrant granting your requested relief.

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,

6/24/2022

[REDACTED]