




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


Docket No: 6299-21
Ref: Signature Date



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 22 February 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 carefully considered your request to remove your 28 February 2003 Report and Disposition of Offense(s)/non-judicial punishments (NJP) and Administrative Remarks NAVPERS 1070/613 (page 13) from your official military record. In addition, to remove any law enforcement, investigation agencies and court records. You also request to be awarded the Navy Good Conduct Medal. The Board considered your contentions that your Administrative Remarks NAVPERS 1070/613 (page 13) charge was found to be an illegal conviction, you had ineffective council at the time of your conviction, you pled not guilty, and had ineffective or no counsel at the time of your NJP. You claim that your court appointed attorney was later disbarred for negligence. As new evidence, you furnished an 8 August 2007 civil court order to expunge your charges and a 23 May 2018 civil court order setting aside your plea and conviction.

The Board noted that you were counseled on 23 June 2001 for failing to disclose an assault and battery charge during June 1999 and you were warned that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation. The Board also note that on 28 February 2003, you received NJP for a

violation of Article 92, Uniform Code of Military Justice (UCMJ) for dereliction of duty by negligently failing to maintain control of your M-16 weapon. You did not appeal your NJP and on the same date you were issued a page 13 counseling you concerning your NJP, the entry provided recommendations for corrective action, where to find assistance, and the consequences for subsequent violations of the UCMJ.

The Board noted, too, that on 8 August 2007, your attorney filed a motion to expunge your 12 May 1999 conviction and arrest records. Your attorney provided that you satisfied your sentence on 14 July 2000, you had not been convicted of a felony in the past two years, and there were no pending proceedings or criminal charges against you. The Court agreed and ordered the expungement of your record. On 23 May 2018, the Sedgwick County Municipal Court set aside your plea and 12 May 1999 conviction because you were charged and convicted of the wrong crime. The victim was your younger brother, age 12, and he did not qualify as a family or household member under the city ordinance and state statute. The Court ordered that your plea and conviction be withdrawn and set aside and that an order be prepared for the Court's approval containing an amendment to correctly reflect the crime that you allegedly committed.

In consideration of your new evidence, the Board found the evidence you provided insufficient to conclude that your NJP for the negligent discharge of your M-16 service weapon and subsequent page 13 were in any way related to your conviction for assault and battery of your 12 year old brother. The Board determined that your NJP was valid and conducted pursuant to the *Manual for Courts-Martial* (1998 ed.). Therefore, the Board found no basis to justify the removal of your NJP and page 13 or to award you the Navy Good Conduct Medal. In addition, the Board noted that your 23 June 2001 page 13 was issued for failing to inform the command of your conviction and determined that the page 13 remains valid. In this regard, the Board found that the page 13 was issued because you failed to notify the command of your conviction and not because you were convicted for assault and battery. As a result, the Board determined that your expungement of your conviction did not invalidate the basis for issuing the page 13 nor did it excuse you for the conduct for which you were originally convicted. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

3/7/2022

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Executive Director

Signed by: █