



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: 6869-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request received on 4 May 2021. You previously petitioned the Board for Correction of Naval Records (Board) and were advised that your application had been denied. Your case was reconsidered in accordance with Board procedures that conform to *Lispmann v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). 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 has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 22 November 2021. The names and votes of the panel members 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 the 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, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie memo. These included, but were not limited to, your desire to upgrade your discharge based on your contentions that: (1) you have been rehabilitated, (2) you received a good conduct medal in 1989 and 1992, (3) the incident that caused you to get a bad conduct discharge happened because you were struggling to cope with the stress that you experienced while serving in the military, (4) you put a dent in the back of the other driver's car because you were angry, (5) you corrected your mistake by paying for the costs of the damages of the other driver's car and verbally apologizing to the driver. Additionally, the Board noted you did not submit character letters to be considered

for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your two (2) nonjudicial punishments and your Special-Court Martial, outweighed these mitigating factors.

Unfortunately, the documents related to your separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officials and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 6 January 1994 with a Bad Conduct Discharge, your narrative reason for separation is “as a result of court-martial (SPCM) other,” your separation code is “JJD2,” and your reenlistment code is “RE-4.”

You are entitled to have the Board reconsider its decision upon the 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,

12/15/2021

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Executive Director

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