



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

█
Docket No. 7750-21
Ref: Signature Date

█
█
█

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 13 January 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, 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).

A review of your record shows that you entered active duty with the Navy in March 1989. Non-judicial punishment was imposed on you in August 1989 for an orders violation followed by another non-judicial punishment in February 1990 for a brief period of unauthorized absence. On 1 March 1990, you were evaluated by mental health after reporting anger issues and diagnosed with a Personality Disorder. While you were determined to be psychologically fit for full duty, you were recommended for administrative separation consideration based on your performance issues. On 17 April 1990, you were referred to mental health by your command and reported continued occupational issues related to your chain of command and other service members. Your Personality Disorder diagnosis was affirmed resulting in a recommendation for administrative separation based on your continued occupational issues along with a Drug and Alcohol screening. Despite this diagnosis and recommendation, you were again deemed psychologically fit for full duty. Prior to the initiation of administrative separation processing, you were absent without authorization (UA) for a period of approximately 2.5 days resulting in another non-judicial punishment on 18 May 1990. Subsequently, you were notified of administrative separation processing for pattern of misconduct and personality disorder on 30 May 1990 prior to your discharge on 22 June 1990 with an Other than Honorable characterization of service.

The Board carefully considered your arguments that you deserve a disability discharge or upgrade to your characterization of service. You argue that you should have received a disability discharge due to your

mental health diagnosis and could have continued your Navy career had you received proper treatment. Unfortunately, the Board disagreed with your rationale for relief.

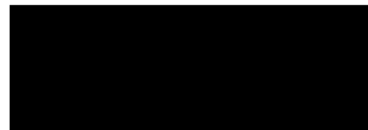
In order to qualify for a disability discharge, a service member must be found unfit due to a compensable disability condition. In your case, the Board found insufficient evidence to support a finding that you suffered from a compensable disability condition or that you were unfit for continued naval service. First, the Board noted that you were twice diagnosed with a personality disorder in the months leading up to your discharge from the Navy. By regulation, personality disorders were considered condition not constituting a disability condition and, therefore, not a compensable disability condition. Absent evidence that you suffered from a qualifying disability condition in 1990, the Board concluded you did not meet the criteria for a disability discharge. Second, the Board also noted that you were twice deemed psychologically fit for full duty in the months leading up to your discharge from the Navy. Based on these medical determinations, the Board concluded the evidence does not support a finding that you were unfit for continued naval service in 1990. Based on these findings, the Board determined the preponderance of the evidence does not support a change to your narrative reason for separation.

Regarding your request for an upgrade to your characterization of service, the Board also determined the preponderance of the evidence does not support relief. As previously discussed, even though you were diagnosed with a personality disorder in 1990, there was no evidence you suffered from a mental illness at that time. So while the Board was sympathetic to your request for an upgrade to your characterization of service, the concluded the totality of the evidence did not support relief. In reaching this conclusion, they weighed your brief period of active duty against the three non-judicial punishments that you incurred during this time. Ultimately, they determined your conduct constituted a significant departure from that expected from a Sailor and found little mitigating evidence to offset your poor behavior. While the Board considered the fact that had your command processed you for an administrative separation on 17 April 1990 immediately after you were medically recommended for separation, arguably you may not have gone UA a second time or qualified for an Other than Honorable characterization of service. In the end, the Board felt this was insufficient evidence to support relief based on an injustice since it involved speculation with no evidence to support a finding that you would not have committed the UA offense on 27 April 1990. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

Lastly, the Board noted you did not submit any documentation or advocacy letters in support of your application to be considered for clemency consideration for an upgrade to your characterization of service based on the Wilkie Memo of 25 July 2018. As such, you may be 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,

1/18/2022



Deputy Director

Signed by: 