



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

█
Docket No: 1097-22
Ref: Signature Date

█
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 18 February 2022. 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 to the Kurta Memo and 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 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 enlisted in the Navy and began a period of active service on 21 June 2001 after receiving a medical waiver for abnormal blood pressure tests during enlistment physicals, with no significant medical history of high blood pressure. You served for nearly two years without incident until 19 March 2003, when you received nonjudicial punishment (NJP) for violations of Article 83, fraudulent enlistment, Article 92, failure to obey a lawful order, and Article 107, false official statement, and Article 134, communicating a threat. The comments in the evaluation report incident to your discharge indicate that these offenses were tied to the discovery that you had

failed “to voluntarily disclose all known medical operations and procedures prior to [your] enlistment” with no further detail. Although your final evaluation assessed a trait average of 2.86 due to your misconduct, the comments otherwise note your career potential, praising your vocational skills, work ethic, team spirit, and contribution to mission. You were discharged on 17 April 2003, with a characterization of type warranted by service, General (Under Honorable Conditions), for the reason of fraudulent entry based on the medical operation or procedure which you had not disclosed during induction.

The Board carefully weighed all potentially mitigating factors, such as your desire to change your narrative reason for separation to a basis other than “fraudulent” entry, which you feel is damaging to your reputation in light of your contention that you did not commit fraud, and your assertion that did not commit fraud because you had received a waiver of physical standards for your medical condition of hypertension. In addition to the medical waiver letter you submitted as evidence, the Board observed that your enlistment physical documents the results of your hypertension tests and contains handwritten notes regarding a waiver for that condition. However, the Board found no evidence in your record that the known condition of hypertension formed the basis of your fraudulent entry; rather, the Board noted that your evaluation report specified the basis of your administrative separation as failure to disclose medical “operations and procedures,” not medical “conditions or diagnoses.” As a result, the Board found the evidence you submitted insufficient to rebut the basis of fraud and determined that the preponderance of available, objective evidence failed to establish that your discharge for fraudulent entry resulted from an error or injustice. Accordingly, the Board determined that your request does not merit relief.

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 is attached 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,

3/9/2022

█

Executive Director

Signed by: █