



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. 2760-22
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 July 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. In addition, the Board considered the advisory opinion by the Office of Legal Counsel (BUPERS-00J), 25 May 2022 and your counsel's response to the opinion.

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.

On 30 September 2014, you were subject to a Special Court Martial and found guilty for violation of Article 92. On 27 January 2015, it was approved as adjudged.

You were discharged with an Under Honorable Conditions (General) character of service and were issued a DD Form 214 for the period of 10 March 1997 to 4 February 2016 due to Misconduct (Serious Offense).

In accordance with 10 U.S.C. section 6330 (Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay). An enlisted member of the Regular Navy or the Navy Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

In accordance with 10 U.S.C. section 1176 (Enlisted members: retention after completion of 18 or more, than less than 20, years of service), a regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

You requested to be credited the time necessary to qualify you for a regular retirement; that your discharge be upgraded to Honorable; and that the Narrative Reason for Separation, the Separation Code, and the Re-entry Code be changed to "Secretarial Authority." The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertion that it was unfair, unjust, and inequitable to punish you at court-martial and then separate you via an administrative separation board, resulting in the effective denial of your retirement eligibility. You were subject to a Special Court Martial and pled guilty to violation of Article 92. Subsequently, an administrative separation (ADSEP) board was conducted for misconduct, serious offence. The Board voted 3-0 that the basis was met and recommended separation with a general discharge. During the ADSEP Board, you would have been able through detailed counsel to make your case for retention. The Board concluded that you provided no evidence of any error within the SPCM or administrative separation (ADSEP) board process, only that it was "curious" that the allegation was adjudicated in a court-martial at all vice Non-judicial Punishment (NJP) or reprimand. You did not complete 20 years of active service; therefore, you are not eligible for retirement. Furthermore, you were not eligible for retention after completion of 18 but less than 20 years of service because you were discharged "under any other provision of law." Furthermore, you pleaded guilty to misconduct and were ultimately discharged for that misconduct; therefore, the Board concluded that changing your Character of Service, Separation Code, and Narrative reason for Separation is inappropriate. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

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,

8/5/2022

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Deputy Director

Signed by: █