



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. 3155-22
Ref: Signature Date

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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.

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 19 September 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 determined that a 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 18 December 1979. On 4 April 1980, you were reviewed by an Enlisted Performance Processing Board relating to preservice drug usage. On 17 April 1980, your commanding officer recommended that you be continued in service. On 11 September 1980, you received nonjudicial punishment for disobeying order by having firecrackers. On 2 September 1981, you received nonjudicial punishment for dereliction of duty. On 15 December 1981, you received nonjudicial punishment for unauthorized absence and disobeying an order. On 17 February 1982, you received nonjudicial punishment for unauthorized absence. On 22 February 1982, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 22 February 1982, your commanding officer transmitted his recommendation that you be discharged due to convenience of the government under a program called Project Upgrade 82. He explained that you were a burden on the command, that you were

absent without authority three times in the last three months, and that you could not be a productive member of the Navy without disproportionate effort. On 5 March 1982, you were discharged with a General (Under Honorable Conditions) characterization of service, a characterization of service that was based your performance marks and your service record.

In your petition you request that your discharge be upgraded to Honorable, that you be restored to your original rate, and perhaps even advanced in rate and receive back pay, that you be medically retired as of the date of your discharge and receive Concurrent Retirement and Disability Pay (CRDP), that you receive combat related special compensation (CRSC) because your service involved being under water, and that you receive a military identification card so that you can access the Base Exchange and apprise yourself of other benefits. In support of your requests, you contend that you were subjected to disciplinary methods that were nothing short of torture and that you suffer permanent damage as a result. You state that there is a "lie" on your Certificate of Release or Discharge from Active Duty that you were "unable to adapt to military service." In further support of your assertions, you submitted a written statement as well as documentation from the Department of Veterans' Affairs (VA) reflecting a 100% service connected disability in relation to a circadian rhythm sleep disorder.

The Board carefully considered your arguments, including the entirety of your petition and its enclosures, and disagreed with your rationale for relief. At the outset, the Board determined that your record does not contain any documentation, nor did you provide any, to support any claim that there was any error or injustice in your separation from the Navy. Specifically, with respect to your request for an upgrade of your discharge characterization, the Board observed that the characterization of service that you were assigned was in accord with the applicable guidance as it is appropriately based on your performance marks and your overall service record, which was marred by the imposition of nonjudicial punishment on four occasions. Similarly, the Board found no support for your request for restoration of rate, advancement in rate, or back pay because the Board found no evidence that would justify such relief.

With respect to your request for a medical retirement, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge from the Navy. In fact, the Board observed that there was no evidence in your record that you were diagnosed with any unfitting conditions. To the contrary, the evidence demonstrates that you were separated as part of a program that allowed for the administrative processing of individuals that were burdens upon their units. The alternative to such a program would be processing based on your record of misconduct, which may have resulted in a discharge under Other Than Honorable conditions.

Based on the Board's finding that you are not entitled to be placed on the retirement list or receive retirement benefits, the Board concluded you are not statutorily eligible to receive CRSC or CRDP.

Finally, the Board did not find any support for your request for military identification or for any other relief that you requested. Accordingly, the Board denied your petition in its entirety.

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,

10/5/2022

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director

A black rectangular redaction box covering the contact information of the Executive Director.