



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. 4491-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 March 2023. 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 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 29 January 2002. On 21 January 2003, you received nonjudicial punishment due to having consumed alcohol prior to duty and found to be intoxicated. You also received a Page 11 counseling explaining that you were eligible, but not recommended, for promotion due to your nonjudicial punishment, and a 6105 counseling for receiving nonjudicial punishment. On 6 November 2004, you were convicted by summary court-martial after testing positive for use of marijuana. On 20 December 2004, you received a formal written counseling concerning your positive test for marijuana and you were advised that you were being processed for administrative discharge. On 28 January 2005, you received a formal written counseling explaining that you were being administratively processed for discharge and that you were would be receiving an RE-4 reentry code. On 9 March 2005, you received nonjudicial punishment for absenting yourself from your place of duty and for failing to obey an order to record in a log book that you were absenting yourself from your place of duty. You also received a formal written counseling concerning your recent nonjudicial punishment. On 28 January 2006, you completed your required active service and you receive an honorable characterization of service.

In your petition, you have requested that the Board correct your naval record by making a finding that you were diagnosed with traumatic brain injury (TBI) during your service. In support of your request, you provided a personal statement in which you explained the various incidents that you contend occurred during your service that caused your TBI, a video of you engaging in explosives training, and medical records. The records you provided include a document from the U.S. Department of Veterans Affairs (VA), which appears to convey a finding by a medical professional that you did not sustain TBI while deployed.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. The materials that you provided with your petition did not include documentation that you were, in fact, diagnosed with TBI while you were on active duty. To the contrary, the documentation you provided appears to include a finding by a VA professional that you did not incur a TBI while you were deployed. Similarly, upon review of your official military personnel file, the Board was unable to find such a diagnosis. The Board is not an investigative body and it is constrained to reviewing the materials that you provide as well as those materials within your service records. As noted, a review of the available records did not yield a finding that you had been diagnosed with TBI while you were on active duty. Accordingly, the Board denied your requested relief.

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,

3/31/2023

