



Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 5 July 2022, the NDRB upgraded your characterization of service to General (Under Honorable Conditions). Additionally, this Board previously denied your request for disability retirement, travel pay, and a discharge upgrade on 17 December 2020.

The Board carefully considered your arguments that you deserve an upgrade to your characterization of service, separation pay based on the NDRB upgrade decision, and a disability discharge. You contend that prior to the administrative separation board, your infectious disease health provider at Naval Medical Center [REDACTED] intended to initiate a medical board due to your HIV condition. You argue that the erroneous administrative separation board decision to discharge you with an OTH displaced your medical board and proper disability discharge. You state that the administrative board decision was invalid as it relied on the false testimony of a former partner. As evidence, you included a medical record, dated 29 September 2009, from a medical provider stating that the physician would dictate a medical board.

The Board again determined that you were properly processed for administrative discharge due to your failure to properly warn potential partners of your positive HIV status. In its previous decision, this Board stated in pertinent part:

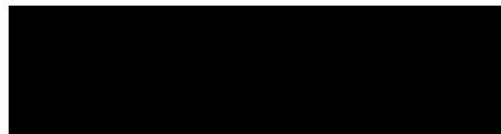
First, the Board concluded that the preponderance of the evidence supports your current characterization of service. In reviewing your record, the Board noted that a Naval Criminal Investigative Service investigation found evidence that you did not warn potential partners of your positive HIV status. This evidence was corroborated by a witness that was engaged in a sexual relationship with you during that period of time. Based on this evidence, the Board determined the administrative separation board findings were supported by the preponderance of the evidence. Further, when taking into consideration the potential for serious bodily harm posed by your misconduct, the Board also concluded it constituted behavior that was a significant departure from the conduct expected of a member of the Navy and qualified for an Other than Honorable characterization of service. The Board considered the evidence you provided of misconduct by your accuser but determined this evidence did not eliminate evidence that shows you also committed misconduct that formed the basis for your administrative separation. Second, based on their finding you were properly discharged for commission of a serious offense with an Other than Honorable characterization of service, the Board concluded that you did not qualify for a 15-year retirement or placement on the disability retirement list. The Board found no evidence you served 15-years of qualifying service for retirement or that you were unfit for continued naval service at the time of your discharge. More importantly, the Board determined that you were ineligible for transfer to either retirement list based on your administrative separation for misconduct. Third, based on your administrative separation for commission of a serious offense that resulted in an Other than Honorable characterization of service, the Board determined you were not eligible for separation or travel pay upon your discharge from the Navy. As previously explained, the Board found the Navy's actions in your case to be appropriate and supported by the preponderance of the evidence.

The Board substantially concurred with its previous rationale. While the Board noted that the NDRB decided to upgrade your characterization of service to General (Under Honorable Conditions) in 2022, in the Board's opinion, this does not change the serious nature of your misconduct or, most importantly, that you were processed and awarded an OTH characterization in 2009. The Board found no evidence that your discharge was issued in error nor that the NDRB decision, issued post-discharge, now qualifies you for benefits you were not entitled to based on your discharge for misconduct. Contrary to your contentions, the Board again found substantial evidence to support the Navy's action in your case, regardless of the NDRB's decision to grant you an upgrade. Absent evidence that you were discharged in error, the Board concluded that you remain ineligible for any military benefits for which you were disqualified based on your misconduct and original discharge processing that qualified for an OTH characterization. This includes any consideration for a disability discharge, along with any pay and allowances upon your discharge. Finally, the Board's opinion remains unchanged regarding the appropriateness of your assigned characterization of service. After considering the actions of the NDRB, the Board found that any injustice in your record has been adequately addressed and no further mitigation is required. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

4/6/2023

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Executive Director

Signed by: 