



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

Docket No. 8016-22
5194-21

Ref: Signature Date

Dear [REDACTED]

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 review and consideration of all of the evidence of record, the Board for Correction of Naval Records [hereinafter referred to as the Board] continued to find insufficient evidence of any material error or injustice warranting relief. Accordingly, your application has been denied.

By letter dated 8 August 2022, you were informed that the Board had denied your request for the restoration of your rank and a medical retirement in Docket No. 5194-21. You subsequently requested reconsideration of that decision by letter dated 24 August 2022, but were informed by e-mail dated 8 September 2022 that reconsideration of the Board's decision would require you to submit a new DD Form 149 along with matters not previously considered by the Board. By letter dated 28 October 2022, I informed you that I had reviewed the circumstances of your case and decided to reopen it for reconsideration despite your failure to provide any such material. Specifically, I granted reconsideration of your case because the Board's decision in Docket No. 5194-21 was based primarily upon the absence of sufficient evidence to justify the medical retirement that you requested, and did not address the propriety of the nonjudicial punishment (NJP) which resulted in your reduction in rate. Although this was not the basis of your original application, I determined that it was a potential avenue for relief that was worth consideration by the Board. Accordingly, I granted reconsideration of your case on that basis alone, and provided you 30 days from receipt of that letter to submit any additional matters for consideration in this regard.

A three-member panel of the Board, sitting in executive session, reconsidered your application on 30 March 2023. The names and votes of the panel members will be furnished upon request. Your case was reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board included your previous application and all materials that you submitted with it; relevant portions of your naval record; and applicable statutes, regulations, and policies. You did not submit any additional matters for the Board's consideration subject to my letter of 28 October 2022.

You commenced a period of active duty service on 29 November 2001, and served without any issues noted in your record until November 2018 when you were issued a written counseling concerning your performance and conduct deficiencies. Specifically, you were reminded of your responsibility to muster in person daily while stationed at [REDACTED], and informed of four specific incidents of substandard performance or disobedience. Among these incidents for which you were counseled was unauthorized absences (UA) from your appointed place of duty. Approximately two months after you received the aforementioned counseling, on 18 January 2019 you received NJP for a separate UA. Your adjudged punishment was to be reduced to the next inferior pay grade (E-5) and to perform 45 days of extra duty, but this punishment was suspended for a period of six months. On 24 January 2019, while your previously imposed punishment was suspended, you again were in an UA status. Accordingly, on 20 February 2019, the suspension of your previous punishment was vacated and the reduction of your grade to E-5 was executed. As a result of this reduction, you surpassed the high-year tenure for that grade. Accordingly, on 21 June 2019 you were honorably discharged as a result of being non-retained on active duty due to reaching high-year tenure.

The Board found no impropriety or unfairness in the imposition of NJP, or in the subsequent vacation of your suspended punishment. Your command first issued you a counseling statement informing you of a number of conduct deficiencies and providing you the opportunity to conform your conduct to that expected of a Sailor. When you failed to do so, your command imposed NJP, but provided you yet another opportunity to improve your conduct by suspending the punishment. You accepted judgment by NJP, and did not appeal its findings or punishment. You needed only to avoid engaging in misconduct for six months to escape any consequences for your misconduct, but you failed to do so. Just six days after receiving NJP for UA, you again went UA. Under these circumstances, it was entirely appropriate and reasonable for your commander to vacate the punishment that had previously been imposed. As a result, you reached your high-year tenure, which subjected you to a discharge. The record reflects that your command was exceptionally patient with you and provided you numerous opportunities to improve your conduct, but you failed to avail yourself of these opportunities. Accordingly, the Board finds no error or injustice pertaining to the imposition of NJP or in the subsequent vacation of your suspended punishment. As a result, the Board also finds no error or injustice in your discharge for having reached your high-year tenure.

You remain entitled to have the Board reconsider its decision, either for this case or your previous case in Docket No. 5194-21, upon the submission of new matters not previously considered by the Board. This will require you to complete and submit a new DD Form 149. 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 you, the applicant, to demonstrate the existence of probable material error or injustice.

Sincerely,

5/3/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]