



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. 8839-22
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found that the evidence submitted was 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 14 March 2023. 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 carefully considered your request to reinstate you to the rank of Corporal (E-4). The Board considered your contentions that, on 22 October 2022, the Department of Veterans Affairs determined your Hepatitis C was service connected, your 10 May 1977 non-judicial punishment (NJP) for falling asleep on duty was out of character, and the most common symptoms of Hepatitis C are fatigue and exhaustion, which you had at the time NJP was imposed.

The Board noted that you received NJP, on 10 May 1977, for violating Article 92, Uniform Code of Military Justice by being derelict in the performance of your duties as the Headquarters and Service Company Duty Noncommissioned Officer, when found asleep in your rack. You were found guilty and awarded a reduction to lance corporal as part of your punishment. The Board also noted that you appealed your NJP but later withdrew your appeal on 27 May 1977.

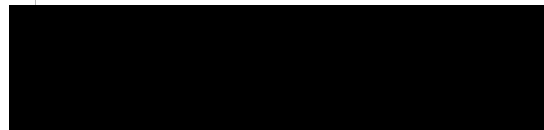
While Board considered your arguments that your medical condition contributed to your misconduct that resulted in NJP, the Board found your evidence insufficient to conclude there was a nexus between your Hepatitis C diagnosis and your misconduct in 1977. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice

warranting corrective action in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require that you 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,

3/27/2023



Executive Director

Signed by:

