



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. 167-23
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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 27 April 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, to include the Kurta Memo.

The Board determined that your 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 entered active duty with the United States Navy Reserve on 1 March 1992. On 31 January 1994, you received a declining evaluation, in which your commanding officer (CO) did not recommend you for promotion or continuation in the naval service. The CO stated that although you had been counseled, you were unable to work within the chain of command, and that your staff work and planning were substandard. On 11 April 1994, your CO requested your detachment for cause (DFC) by reason of unsatisfactory performance of duty. On 15 September 1994, the Chief of Naval Personnel approved your DFC. On 30 November 1995, you were discharged with an Honorable characterization of service due to completion of active service. On 1 October 1999, you were discharged with an

Honorable characterization of service from the United States Naval Reserve due to having at least twice failed selection for promotion to the next higher grade and completing the appropriate total years of commissioned service.

For this petition, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta Memo. These included, but were not limited to, your desire for a medical discharge based on post-traumatic stress disorder (PTSD) due to racism and harassment you experienced during your active service. You further claim that your career was unjustly shortened due to racism and discrimination and you warrant a promotion and retirement at O-6, Captain.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In reviewing your record, the Board found insufficient evidence that you met the criteria for a disability discharge. In reaching its decision, 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.

While the Board noted your declining performance at NMCB [REDACTED] and your eventual DFC, the Board determined this was insufficient evidence to find that you were unable to perform the duties of your office, grade, rank or rating as a result of a disability condition. In making this finding, the Board noted that you continued to serve in the Navy Reserve until October 1999 and were discharged for failing to select for promotion. The Board found no evidence that you were ever referred to a medical board or the Physical Evaluation Board. As a result, the Board found no basis to grant your request for a disability discharge.

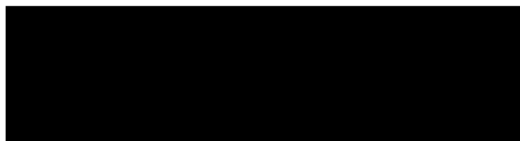
Regarding your request for promotion to O-6, the Board found no evidence to support your request. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board noted you provided no evidence to overcome this presumption. Finally, the Board also noted that you provided no evidence to substantiate your contentions. Therefore, the Board concluded you were appropriately passed over for promotion and discharged at the end of your obligated service after twice failing to select for promotion. Even in light of the Kurta Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of equity. 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,

5/15/2023



Deputy Director

Signed by [Redacted]