



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. 3632-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 30 May 2023, has carefully examined your current request. 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.

You previously applied for relief to this Board and were denied on 14 March 2023.

The Board carefully considered your current request to reinstate you to the rank of Corporal (E-4). The Board considered your contention that the 10 May 1977 Non-judicial punishment (NJP) you received for falling asleep on duty was a symptom of your Hepatitis C condition. Further, the Board considered whether the previous Board decision erroneously referenced a NJP appeal withdrawal.

The Board noted that, on 10 May 1977, the Commanding Officer, █ imposed Nonjudicial Punishment for violation of Article 92 of the Uniform Code of Military Justice. You were determined to be derelict in the performance of your duties as the Headquarters and Service Company Duty Noncommissioned Officer when found asleep in your rack. As part of your punishment, you were reduced to Lance Corporal (E-3).

After careful consideration of your application and review of the entire record, the Board concluded that insufficient evidence of a nexus exists between your Hepatitis C condition and your

misconduct. Further, the Board noted that you were found derelict in your duty, in part, because you were “found asleep in your rack.” Thus, the Board concluded that you made the conscious decision to lay down while standing post on duty the Headquarters and Service Company Duty Noncommissioned Officer. Therefore, the Board affirmed its previous decision that the NJP was not in error.

Next, the Board considered your assertion that the previous Board decision may have erroneously confused your withdrawal of a NJP appeal with one associated with a Special Court Martial. The Board noted that in accordance with the Page 12 (Offenses and Punishments) in your record, you appealed the NJP, however, on 27 May 1977, you withdrew the appeal. Therefore, the Board determined the previous Board decision correctly documented your withdrawal of your NJP appeal. The Board thus determined there is insufficient evidence of an error or injustice warranting reinstatement of your paygrade to Corporal (E-4). Accordingly, given a 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,

6/6/2023

