



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. 7795-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 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 30 November 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, applicable statutes, regulations, and policies.

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 in the Navy on 22 May 2001. Your service record documents that, on 12 December 2001, you were reported as being UA (unauthorized absence) from your command, the █

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this

discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, 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. Your DD Form 214 reveals that you were separated from the Navy on 22 February 2002 with an OTH characterization of service, your narrative reason for separation is "In Lieu of Trial by Court Martial," your separation code is "KFS," and your reenlistment code is "RE-4."

You contend that during your period of UA you were stabbed and woke up in a hospital room in [REDACTED]. You argue that due to the medication you were taking for your injury, you signed paperwork authorizing separation from the service with an OTH characterization of service. You contend that if you were not medicated you would have pursued a medical discharge.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted you did not provide any evidence to support your contentions. In addition, the Board determined that your misconduct, as evidenced by your UA and discharge in lieu of trial by court martial, constituted a departure from that expected of a service member and continues to warrant an OTH characterization of service.

Regarding your request for a disability discharge, the Board found no evidence that you suffered from an unfitting health condition while on active duty. Regardless, even if evidence of unfitness existed, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. 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,

12/19/2023

[REDACTED]