



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. 9193-23
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 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 December 2023. The names and votes of the panel members 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 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 enlisted in the Marine Corps and commenced a period of active duty on 31 January 1995. On 15 July 1996, you received nonjudicial punishment for use of marijuana. On 27 June 1997, you received a written counseling stating that you were eligible but not recommended for promotion due to a recent period of unauthorized absence. On 17 July 1997, you received nonjudicial punishment for being absent from your appointed place of duty and for uttering worthless checks on three occasions. On 12 September 1997, you received nonjudicial punishment for violating your restriction orders. On 7 November 1997, you were issued a written counsel that stated:

Over the past 14 months you have established a pattern of misconduct. You have been the subject of NJP three times, the third coming on the heels of the second for

breaking restriction awarded at your second NJP. These are not the only events contributing to your pattern of misconduct. Your check writing privileges were suspended aboard the [REDACTED] for writing worthless checks there. You have also written worthless checks to MWR and various businesses in the [REDACTED] area. Also you took another Marine's vehicle to [REDACTED] without permission and wrecked it. You borrowed another Marines computer prior to going UA and never returned it. You ran up a phone bill in excess of \$200 00 at another Marine's residence and never paid your bill. Although not all of these instances have until now been documented they are indicative of the pattern of misconduct you have established for yourself.

On 15 December 1997, you were treated at the Emergency Room at [REDACTED] Naval Hospital. The emergency room treating provider noted that you presented with back pain, that you had a long history of scoliosis, and that you had previously complained of back pain. On 9 January 1998, you were placed on limited duty due to spondylolisthesis for six months.

On 21 April 1998 you were issued another written counseling, admonishing you for failing to inform your chain of command of your whereabouts on 31 March 1998 when you went to Portsmouth Naval Hospital. You were directed to ensure you notify your chain of command of all appointments you have which that would prevent you from reporting for your normal daily work routine. On 27 April 1998, you received nonjudicial punishment for your absence from formation, disrespect and using expletives to a sergeant, refusing an order to get into uniform, and for a false statement. On 24 June 1998, you received nonjudicial punishment again for being absent from a medical appointment, unauthorized absence for five days, disobeying an order, and for making a false statement by filing a false travel voucher. Your Certificate of Release or Discharge From Active Duty (DD Form 214) reflects that you had an administrative discharge board, and that on 13 November 1998, you were discharged with an Other Than Honorable characterization of service.

In 2022, you filed a petition with this Board seeking similar relief, which this Board denied on 26 September 2022. In your current petition, you seek reconsideration of the denial of your petition. In support of your request for reconsideration, you request that your discharge be upgraded and that you receive a disability retirement. In your prior petition, you argued that you were discharged from the Marine Corps after your back was injured and that your Commanding Officer promised you that if you were discharged you would be able to obtain a disability benefit. In your request for reconsideration, you provided additional post-service medical records concerning your back as well as three letters of recommendation. You also checked the block on the DD 149 reflecting that your request relates to Post-Traumatic Stress Disorder (PTSD), but you did not provide any medical evidence relating to a PTSD diagnosis. In particular, you did not provide any documents or other evidence that you were diagnosed with PTSD while you were on active duty.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In its review of the new material that you provided in support of your request for reconsideration, including reviewing all documentation for information concerning any PTSD diagnosis, the Board was unable to find evidence sufficient for it to reverse its prior decision. With respect to your provision of additional medical

documentation, the Board observed that the additional material documented that you had undergone a procedure on your back when you were in the Marine Corps. However, the documentation does not rebut the finding that, while you were on active duty, you were never referred by any of your treating physicians to a medical evaluation board or to the Physical Evaluation Board for review of any potentially unfitting conditions. Further, you did not provide any new and material evidence to demonstrate that you were unfit to perform the duties of your office, grade, rank, or rating, as this Board explained to you in its prior denial letter. Finally, despite your noting PTSD as an issue in your request for reconsideration, the Board was unable to find any evidence or argument concerning a PTSD diagnosis. Finally, the Board noted that, even if you were found to have been eligible to be processed in the Disability Evaluation System (DES), your administrative processing for your repeated misconduct would have taken precedence over such DES processing.

With respect to your request that your discharge be upgraded from Other Than Honorable, the Board carefully reviewed the new material that you provided in the form of letters of recommendation as well as new arguments concerning the circumstances surrounding your misconduct. The Board determined that, in light of the quantity and quality of the misconduct that you engaged in during your service, the additional evidence was insufficient for the Board to change its prior decision. In sum, in its review and consideration of all of the new and material evidence that you provided, the Board did not observe any error or injustice in your naval records. Accordingly, given the totality of the circumstances, the Board determined that your request for reconsideration 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,

1/11/2024

