

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No: 2959-19 Ref: Signature Date



Dear

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 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 application on its merits. A threemember panel of the Board, sitting in executive session, considered your application on 28 July 2020. 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, relevant portions of your naval record, and applicable statutes, regulations, and policies, as well as the enclosed 20 April 2020 advisory opinion (AO) furnished by a qualified mental health professional.

You enlisted in the Marine Corps on 24 June 1981. On 29 November 1982, you received nonjudicial punishment (NJP) for disobeying a lawful order and using disrespectful language. On 26 May 1983, you were counseled for concealing pyrotechnics in your barracks room. On 23 August 1983, you received a second NJP after absenting yourself from the rifle range, your appointed place of duty. On 29 August 1983, you were formally counseled concerning a pattern of misconduct developing in your conduct. On 10 October 1983, you were admitted to the hospital after being found nonresponsive and starring off into space in front of your barracks, and diagnosed with mixed personality disorder which existed prior to entry into service. On 25 October 1983, you received a third NJP for absenting yourself from your appointed place of duty. On 4 January 1984, you began a period of unauthorized absence (UA) which lasted until you surrendered on 6 January 1984. On 15 March 1984, you received a fourth NJP for disobeying a lawful order and destroying a window through neglect. On 4 May 1984, you began another period of UA which lasted until you surrendered on 6 June 1984. On 26 July 1984, you submitted a written request for discharge for the good of the service to avoid trial by court-martial for your 3 and 33-day UAs. Prior to submitting this request, you consulted a qualified military lawyer, at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. After the staff judge advocate reviewed your request and recommended approval, your commanding officer was directed to discharge you with an other than honorable (OTH) characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 13 August 1984, you were discharged with an OTH characterization of service.

Your request for an upgrade to your characterization of service was reviewed in consideration of your contention that you suffered from a mental health condition after "being attacked in by a known homosexual." Your request was fully and carefully considered by the Board in light of the Secretary of Defense's 3 September 2014 memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder," the 25 August 2017 memorandum, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," and the 25 July 2018 memorandum, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations."

As part of the Board's review, a qualified mental health provider reviewed your request and provided the Board an advisory opinion (AO) on 20 April 2020. The AO stated your in-service medical records contained evidence of a personality disorder diagnosis but no evidence of any traumatic incidents in the military or any other additional mental health symptoms or conditions. Further, the AO stated the post-service civilian psychological evaluation, completed 11 years after your discharge, did not contain any additional evidence nor did you submit any other evidence in support of your petition for relief. The AO concluded there was insufficient evidence of a mental health condition attributable to your military service that may have mitigated your misconduct. The AO was provided to you on 21 April 2020, and you were given 30 days to submit a response. When you did not provide a response, your case was submitted to the Board for consideration.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you suffered from a mental health condition due to an attack by a known homosexual which negatively affected your performance and mental state. The Board also considered your personality disorder diagnosis which existed prior to entry, your learning disability, your contention you were not provided the "correct mental health treatment from the base hospital ward," and the neuropsychological assessment conducted by a civilian mental health provider in 1995. Further, the Board considered your contention you were "not afforded fair representation during the court-martial proceedings," "no one explained what was happening," and you were "unable to process the magnitude of my sentencing." Even under the liberal consideration standard, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your UA misconduct warranted an OTH characterization of service. Further, the Board concurred with the AO and concluded there was insufficient evidence of a mental health condition that may have mitigated your misconduct. The Board also

noted that you consulted counsel prior to submitting your request for discharge and, presuming government regularity, concluded you did not submit evidence that supports your contention that you were not "afforded fair representation" that fully explained the process. Finally, the Board noted you received a benefit from being allowed to separate with an undesirable characterization of service instead of risking greater punishment at a court-martial. The Board thus concluded that there is no probable material error or injustice in your record warranting corrective action.

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 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,

