



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

█
Docket No: 4710-19
Ref: Signature Date

█

Dear █

This 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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 three-member panel of the Board, sitting in executive session, considered your application on 9 October 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, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 9 August 2020, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 7 December 1992. On 14 April 1994, you received nonjudicial punishment (NJP) for making a false official statement, wrongful use of government phone services by making personal calls, and failure to pay debts. On 25 May 1995, you received NJP for making a false official statement that your vehicle had been stolen. On 19 July 1995, you received NJP for failing to go to your appointed place of duty, disobeying a lawful order, four instances of making a false official statement, forging an official document, and eight specifications of uttering a bad check. On 24 August 1985, you were counseled concerning your pattern of misconduct and frequent violations of the Uniform Code of Military Justice. You were warned that failure to take corrective action could result in

administrative discharge. On 5 January 1996, you were convicted by Special Court-Martial (SPCM) of seven days of UA, two specifications of failing to go to your appointed place of duty, and with intent to deceive, sign an official record, which record was false. You were sentenced to a period of confinement, a reduction in paygrade, and a bad conduct discharge (BCD). On 18 March 1986, the convening authority suspended all confinement for a period of 12 months. On 23 October 1997, you received your BCD.

You request a change to your characterization of service based on your assertion that you were suffering from depression at the time of your SPCM. Your request was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014 and the "Clarifying Guidance to Military Discharge Review Board and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" memorandum of 25 August 2017.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from a mental health condition during your service. The AO noted you did not provide any additional clinical records or evidence to support the existence of a mental health condition, and you have submitted no evidence describing in-service mental health symptoms or conditions. Further, you have not submitted any evidence of a post-discharge mental health condition as rendered by a mental health practitioner. Therefore, the AO concluded by opining that there is insufficient evidence of a mental health condition attributable to your military service that may have mitigated your misconduct.

The Board carefully weighed all potentially mitigating factors, such as your record of service, and desire to upgrade your discharge. The Board also considered your assertions that you received a court-martial for being UA for 1 day, and while suffering from depression which began after a back injury while on active duty and subsequent surgery and rehabilitation. The Board concluded these factors and assertions were not sufficient to warrant changing your characterization of service given your misconduct, which resulted in three NJPs, a SPCM conviction, and the fact that you were warned of the consequences of further misconduct after your third NJP. Further, the Board concurred with the AO in that there is insufficient evidence of a mental health condition attributable to your military service that may have mitigated your misconduct.

The Board also reviewed your application under the recent guidance provided in the Under Secretary of Defense's memorandum dated 25 July 2018 entitled, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" (USD Memo). The purpose of the USD Memo is to ease the process for veterans seeking redress and assist Boards for Correction of Military/Naval Records (BCM/NRs) "in determining whether relief is warranted on the basis of equity, injustice, or clemency." The USD Memo sets clear standards and principles to guide BCM/NRs in application of their equitable relief authority, and further explains that boards shall consider a number of factors to determine whether to grant relief. However, even in light

of the USD Memo, the Board still concluded given the totality of the circumstances, 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 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,

12/18/2020

█

Executive Director

Signed by: █