



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: 10653-19

Ref: Signature Date

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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 relevant portions of your naval record and your application, 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 three-member panel of the Board, sitting in executive session, considered your application on 26 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to its 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.

You enlisted in the Navy and began a period of active duty in on 18 October 2000. You received nonjudicial punishment (NJP) on 24 May 2001, for being drunk on duty. On 20 July 2001, you received a second NJP for insubordinate conduct toward a first class petty officer and for failure to obey a lawful order by not wearing your restricted personnel badge.

You were evaluated by medical on 18 July 2001; you were found not to meet the DSM IV criteria for alcohol abuse or dependency, but recommended for outpatient treatment for alcohol abuse because of minimization of disclosures. It was also recommended that you see a mental health provider for possible "Adjust Disorder/Depression" issues. The medical notes indicate

that you understood the recommendations and were amenable to alcohol treatment, but did not agree with the mental health evaluation for adjustment and depression issues.

On 17 September 2001, you received NJP for failure to obey a lawful order, and for assault. You were notified the following day of administrative separation proceedings being initiated against you on the basis of commission of a serious offense and a pattern of misconduct. You waived your right to appear before a board. On 21 September 2001, Commanding Officer, US Naval Forces █ approved your discharge with an other than honorable (OTH) characterization of service on the basis of misconduct due to commission of a serious offense. You were discharged on 26 October 2001, with an OTH characterization of service and a reentry (RE) code of RE-4.

In your application, you indicate that you would like an upgrade to your OTH characterization of service and the removal of the misconduct reflected in your service record. You state that a Navy doctor recognized that you had a mental health problem, and provide medical notes from 18 July 2001, to support your request.

The Board noted that you brought up the issue of an in-service mental health condition as a mitigating factor to your conduct. Accordingly, the Board fully and carefully considered your request 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. The Board also reviewed your petition in light of the Under Secretary of Defense's memorandum, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" of 25 July 2018.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, including your contention that you suffered from an in-service mental health condition. The Board reviewed the medical notes that you provided, and considered that you were recommended for treatment for possible adjustment disorder/depression but did not avail yourself of mental health treatment. The Board also noted that you did not provide information confirming a diagnosis of a mental health condition, nor did you provide evidence to connect a mental health condition as a mitigating factor for your misconduct. The Board found that even when applying the current guidance regarding mental health conditions as a mitigating factor, the information you provided was not sufficient to establish that you suffered from a mental health condition that mitigated your misconduct while in the Navy. Absent such information, the Board found that the adverse information as documented in the NJPs and the administrative separation package, should remain in your record. Furthermore, the Board found that your three NJPs were a sufficient basis for the OTH characterization of service. The Board concluded that the discharge was issued without error or injustice, and corrective action is not warranted.

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,

12/13/2020

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Executive Director

Signed by: █