



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

■
Docket No: 11596-19

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.

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 22 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.

You enlisted in the Navy and began a period of active duty on 15 August 1989. On 9 October 1990, you received non-judicial punishment (NJP) for an unauthorized absence and wrongful possession of a military identification card. On 7 May 1992, you were convicted by special court-martial (SPCM) of violating a lawful regulation and assault by waiving a weapon. As punishment, you were awarded confinement, forfeiture of pay and reduction in rank. Subsequently, you were notified of pending administrative action to separate you from the naval service because of misconduct due to commission of a serious offense. After consulting with counsel, you chose to waive your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) recommended that you be administratively discharged from the naval service with an other than honorable (OTH) characterization of service. The separation authority approved the CO's recommendation and directed your OTH discharge by reason of misconduct due to commission of a serious offense. On 15 August 1992, you were so discharged.

The Board carefully weighed all potentially mitigating factors in your case, including your desire to upgrade your discharge. The Board considered your contentions that: (a) you bought a gun to protect yourself, because you lived in a bad area of town and feared for your life, and the day the incident occurred, a person started road rage against you while you were driving in your car and you did not know what was going to happen; (b) you worked hard and learned your job; (c) your supervisor saw fit to submit your name to the CO for a promotion; and (d) you earned the rank of E-4 and were becoming a Navy man.

Unfortunately, after careful consideration of your contentions and assertions, as well as the details set forth in your service record, the Board concluded that there was insufficient evidence to conclude that an error or injustice occurred that supports upgrading your characterization of service or sufficient evidence to warrant clemency. Even under the liberal consideration standard, the Board found the misconduct detailed in your service record supported an OTH characterization of service.

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,

12/11/2020

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Executive Director

Signed by: █