



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

█
Docket No. 10341-23
6616-22
5830-21
Ref: Signature Date

█
█
█
█
█

Dear █

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.

A three-member panel of the Board, sitting in executive session, considered your application on 29 February 2024. 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 current application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as your two previous applications, Docket No. 6616-22 and Docket No. 5830-21, and the material submitted in support thereof. The Board also considered the 28 September 2021 advisory opinion (AO) furnished by Navy Personnel Command (PERS 32); the 26 January 2022 AO furnished by Navy Personnel Command (PERS-803); and the 9 November 2021 AO furnished by Navy Personnel Command Office of Legal Counsel (PERS-00J), your rebuttal response, and the PERS-00J supplemental AO response of 15 April 2022.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully reconsidered your request for removal of any reference to the adverse material that caused your separation from the Navy; reinstatement to active duty with retroactive reinstatement of all entitlements; retroactive promotion to and reinstatement in the rate/grade YN2/E-5 with a time in rate effective 19 March 2019 to present; back pay, allowances, leave,

and entitlements dating back to 19 March 2019; and issuance of a letter of continuity to account for the time lost as a result of the Navy's erroneous decision to separate. You again contend your discharge was found to be unjust by the Naval Discharge Review Board (NDRB) and this Board should adopt the NDRB findings and decision. In the event the Board declined to "simply adopt" the NDRB findings and decision, counsel contends the current filing contains "all new evidence and new arguments." Although a review of the submitted evidence revealed it is not new nor are the arguments entirely new, the Board carefully considered your contentions regarding the command's erroneous decision to separate you which resulted in the loss of your career and employment. You specifically contend the command's decision to initiate a separation action wherein you would have "virtually no opportunity to defend [yourself]" was "procedural injustice" because the command knew its evidence was not strong enough to secure a conviction and you would likely prevail at an administrative discharge board. You contend this procedural path highlights the "unfair, unjust, and inequitable outcome of this case."

Additionally, the Board considered your contentions regarding the Article 107 (False Official Statement) violation of the Uniform Code of Military Justice (UCMJ). Specifically, you contend the allegation badly conflates two separate crimes -- false official statements and forgery -- and there is insufficient evidence to substantiate either allegation by the preponderance of the evidence. The Board carefully considered your detailed arguments regarding the Article 105 (Forgery) and Article 107 (False Official Statement) charges which you contend support the argument that you did not violate either UCMJ article. The Board also carefully considered your substantive analysis of the Article 92 UCMJ violation. Lastly, the Board considered your "additional observations" regarding the command's interactions with the apartment management employees and specifically an e-mail you contend conclusively shows the command was determined to "gin up adverse information" about you. But for the command's erroneous conclusion you engaged in these acts and its decision to separate, you contend you would still be in the Navy so the only "fair, just, and equitable outcome" is to return you to your pre-separation status.

The Board reiterated its earlier determination that the NDRB's decision is not controlling on this Board. As previously mentioned, the Board noted that your Commanding Officer's decision to administratively separate you came after approximately 12 counseling sessions regarding poor performance and violations of the UCMJ spanning from July 2017 through June 2018 and culminating with the additional misconduct specifically noted in your administrative separation notification. The Board specifically noted the violations that ultimately resulted in your administrative separation were not isolated events or first-time instances of misconduct or poor performance but rather the last in a long line of documented events.

The Board, relying on its findings of fact outlined in the Docket No. 5830-21 Decision Document, again substantially concurred with the Navy Personnel Command Office of Legal Counsel (PERS 00J) supplemental AO of 15 April 2022. The Board concurred with the AO's discussion that "[a] through and proper review of the evidence demonstrates that sufficient evidence existed to warrant [your] administrative separation." The Board carefully considered your specific contentions regarding the UCMJ violations but substantially concurred with the AO's determination you were in violation of a lawful order from [REDACTED] and the

command appropriately concluded, by a preponderance of the evidence, you had presented a false document to the landlord.

After review and reconsideration of your contentions and the entirety of evidence provided by you, the Board again concluded sufficient evidence existed to warrant your administrative separation. Based on the available evidence, the Board again concluded there was insufficient evidence of an error or injustice to warrant granting your requested 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

3/27/2024

