



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

██████████
Docket No. 6992-24
Ref: Signature Date

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Dear Petitioner:

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.

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 January 2025. 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, as well as the advisory opinion (AO) furnished by a Ph.D., Licensed Clinical Psychologist and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their 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.

The Board carefully considered your request for meritorious advancement to E-6 effective the date of your discharge, pay and allowances from 15 July 2010 to 31 October 2020, and \$5,000,000 in pain and suffering. The Board considered your statement that you were arrested and charged with identity theft in December 2007. You claim your command at the time was aware of the charge. You contend your new command accused you of lying, hiding the civilian conviction, and fraudulently separated you. You also claim the command threatened you with an Other Than Honorable discharge, however, if you did not fight the discharge, you were offered a general discharge. You also contend that your command did not have the authority to discipline you for something that happened at a previous command that chose not to discipline you. You further

contend that your exit physical stated you were not physically fit for discharge. You assert that if you were not fraudulently discharged, you would have received the necessary care and would have remained in the service until retirement.

In response to the AO, you noted that you applied for a fraudulent discharge. Your fraudulent discharge was due to the command not having proper authority to discharge you. You also claim that your mental health has been confirmed and diagnosed through Veterans Affairs (VA) with a rating of 70 percent for Post Traumatic Stress Disorder.

The Board noted that you pled guilty, and you were found guilty of identity theft in the first degree in the Superior Court of Washington. The Board also noted that you were properly notified of administrative separation processing for misconduct due to your civilian conviction in accordance with MILPERSMAN 1910-144. You submitted a Conditional Waiver Request in accordance with MILPERSMAN 1910-226, in which you acknowledged being considered for administrative separation from Naval Service by reason of misconduct and your discharge could result in an Under Other Than Honorable characterization of service. In lieu of electing an administrative board, you requested a General (Under Honorable Conditions) discharge from the Navy and if granted, you waived your right to any administrative board action.

The Board determined your contention that you were fraudulently separated lacks merit and is not supported by sufficient evidence. In this regard, the Board noted that you were notified of the basis for administrative separation, you acknowledged the notice, waived all of your associated rights, and indicated that you did not intend to file an appeal. The Board also noted that your Conditional Waiver was submitted in accordance with MILPERSMAN 1910-226. Other than your statement, the Board found no evidence that you were threatened by your chain of command. Conditional Waivers are voluntarily, they include waiving your right to an administrative board, contingent upon receiving a General (Under Honorable Conditions) characterization of service, instead of Under Other Than Honorable. The Board determined that the terms of the Conditional Waiver are clear, in your case, you attested to consulting with legal counsel prior to making the decision to waive the administrative board, and you “entered into this conditional waiver free of duress or other promises of any kind.” Your Conditional Waiver request was granted, in keeping with the terms of the Conditional Waiver you were properly discharged with a General (Under Honorable Conditions) characterization of service.

Concerning the commands authority to discipline you for something that happened at a previous command, the Board found no evidence of disciplinary action by your commanding officer (CO), and you provided none. The administrative separation process is administrative and not punitive in nature. The Board determined that your CO’s authority to process you for administrative separation was not limited because your misconduct occurred at your previous duty station. MILPERSMAN 1910-010 authorizes commanders are to, “[i]dentify, in a timely manner, Service members whose behavior is symptomatic of character flaws that do not meet our high standards, and who exhibit a likelihood for early separation.” Commanders are also authorized to, “[s]eparate promptly, those Service members who do not demonstrate potential for further service.” Your CO had the discretionary authority to determine that your misconduct warranted early separation. That determination is not indicative of an error or injustice. Moreover, MILPERSMAN 1910-144 provides that “[m]embers may be separated based on civilian

convictions or actions tantamount to: (1) Findings of guilt . . .” “All civilian convictions (Federal, State, and local), including any actions tantamount to findings of guilt are binding on the issue of whether misconduct has occurred . . .”

Concerning your claim that you were not physically fit to be discharged, the Board found no evidence to support this claim, and you provided none. The Board noted that you indicated other mental health on your application and substantially concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and to attribute your misconduct to a mental health condition. The Board also noted that your separation physical notes that you were taking a psychotropic medication (Zoloft) for anxiety and worry, however, there are no corresponding or related records to this effect in your petition and your statement and VA rating are not sufficiently detailed to establish clinical symptoms or to provide a nexus to your misconduct.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

1/24/2025

