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

[redacted]
Docket No: 4422-21
Ref: Signature Date

[redacted]

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 you did not file your application in a timely manner, the statute of limitations was waived in the interests of justice. A three-member panel of the Board, sitting in executive session, considered your application on 4 August 2021. The names and votes of the panel members 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, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You entered a period of active duty in the Navy on 5 January 1987. On 6 January 1987 you began recruit training. A Medical Evaluation Board (MEB) report dated 21 January 1987 stated that on 13 January 1987 you were treated at sick call for a sharp, shooting pain radiating from your first metatarsophalangeal joint up your right leg. The MEB report further noted, "[t]he past history before enlistment in the Navy, as obtained from the patient, reveals that he has had bunion pain in the right foot for the last two years. The patient had his own podiatrist and he was scheduled for surgery but was unable to have it done. The patient states the problem has gotten worse over time. The patient did not mention this condition at the time of enlistment." You were referred to Podiatry, and diagnosed with severe hallux abducto valgus deformity of the right foot, that existed prior to entry (EPTE). The MEB report further recommended your discharge by reason of erroneous enlistment. You were informed of the MEB recommendation on 21 January 1987 and did not submit a statement in rebuttal. On 22 January 1987 you were notified of administrative separation processing by reason of defective enlistment due to your diagnosis. The separation authority

concurred with the MEB findings and you were discharged on 5 February 1987 with an Entry Level Separation.

You contend through counsel that the medical notes from January 1987 that were used in the MEB report that determined you had a condition that existed prior to entry were "wholly incorrect and baseless, [and] falsified at the time of [your] medical examination." You further contend the command failed to complete a line of duty investigation which would have demonstrated your diagnosis was caused or exacerbated by your service in the Navy. You state the "combination of the ill-fitting boots with the long days of training were the impetus for the feet issues that ultimately disqualified [you] from military service."

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contentions noted above and desire to upgrade your discharge. In its deliberations, the Board concurred with the detailed MEB report, determined that a line of duty investigation was not required based on the nature of your foot injury, you were properly notified of the contents of the MEB report, and found no due process violations occurred. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board found no probable material error or injustice in the processing of your administrative separation proceedings, and these determinations outweighed the mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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.

Sincerely,

8/20/2021

[redacted]

Executive Director

Signed by: [redacted]