



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: 6332-21

Ref: Signature Date



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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 October 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 the 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).

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.

You enlisted in the Marine Corps on 19 September 2005. Your pre-enlistment physical examination on 28 April 2005 and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms, or any orthopedic concerns. However, on 1 March 2006 you were discharged from the Marine Corps for a condition, not a disability with an uncharacterized entry level separation (ELS) characterization of service and assigned an RE-3P reentry code after completing less than six months of active duty service.

Unfortunately, the administrative separation (Adsep) documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officials, and given the narrative reason for separation and corresponding separation and reentry codes as stated on your Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed that you were properly processed and discharged from the Marine Corps by reason of convenience of the government (COG) due to a condition not a disability that interfered with the performance of duty. The Board noted that in blocks 24 through 28 of your DD Form 214 it states: "Uncharacterized," "MARCORSEPMAN par 6203.2," "JFV1," "RE-3P," and "Condition, Not a Disability," respectively. Such DD Form 214 notations collectively refer to an ELS Adsep by reason of COG.

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 sole contention that the VA recently granted you a 30% rating for a service-connected disability. Based upon this review, however, the Board concluded these potentially mitigating factors were insufficient to warrant relief.

The Board considered your overall record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that you were appropriately separated with an ELS because you clearly had a disqualifying medical condition. The Board noted that on 1 March 2006 you received a Page 11 where you acknowledged your administrative separation and that you were receiving an RE-3P reentry code due to a "Lower Extremity Strain Left Foot."

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, the Board noted that COG separations such as yours initiated within the first 180 days of continuous active duty will be described as ELS in the Marine Corps. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Lastly, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your ELS discharge, and the Board concluded that you merited your receipt of an ELS at the time of your discharge.

The Board observed that in the Marine Corps, the RE-3P reentry code means "failure to meet physical/medical standards," and is used in cases such as yours involving conditions (not amounting to a physical disability) which interfere with the performance of duty, absent any evidence to the contrary. The Board also noted that your RE-3P reentry code may not prohibit

reenlistment, but requires that a waiver be obtained. In the end, the Board concluded that you received the correct discharge characterization, narrative reason for separation, separation code, and reentry code based on your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

Additionally, despite the fact that your Adsep records were not in your service record, the Board relies on a presumption of regularity to support the official actions of public officials. In the absence of substantial evidence to rebut the presumption, to include evidence you submitted, the Board presumed that you were properly processed for separation and discharged from the Marine Corps for a condition not amounting to a physical disability involving a lower extremity strain.

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,

11/15/2021

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Executive Director

Signed by: █