



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: 6496-21

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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 18 February 2022. 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps on 22 January 2001. Your pre-enlistment physical on 12 September 2002 and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, abnormalities, or history. You expressly denied ever having asthma or shortness of breath on your medical history. Additionally, on your self-reported pre-service

medical history you stated you were currently in good health, not taking any medications, and you specifically denied any and all other medical conditions or notable injuries.

While still in initial recruit training on 15 May 2001 a Medical Dispositions Officer (MDO) recommended an erroneous enlistment discharge for you based on diagnosed asthma that existed prior to joining the service. The MDO determined that you did not meet the minimum physical standards for enlistment and concluded that medical board proceedings would not be appropriate. On 19 June 2001 your command initiated administrative discharge action by reason of erroneous entry into the Marine Corps based on a disqualifying asthma diagnosis. Ultimately, after only serving for 152 days on active duty you were discharged from the Marine Corps with an uncharacterized entry level separation (ELS) on 22 June 2001 and assigned an RE-3P reentry/reenlistment code (failure to meet physical/medical standards). In this regard, you were assigned the correct characterization and reentry code based on your factual situation at the time as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training. On 16 March 2010 your reentry code was administratively changed to RE-3F (failure to complete recruit training).

On 14 October 2005 the Board denied your initial petition for relief. The Board rejected your contention that you did not suffer from asthma prior to enlisting. On 10 January 2013 the Naval Discharge Review Board (NDRB) denied your discharge upgrade request, but changed your narrative reason for separation to "Secretarial Authority." The NDRB determined your in-service diagnosis did not meet the criteria for erroneous entry, but still warranted your separation. On 12 March 2015 the Board denied your petition again. The Board determined that the NDRB erred and overlooked pertinent active duty medical record entries indicating you disclosed to a Navy Medical Officer on 4 May 2001 a disqualifying pre-service history of asthma and chronic bronchitis. The Board determined that the 2013 change in narrative reason did not provide a basis for changing your reentry code.

On 3 December 2016, the Board denied your petition for relief again. The Board reviewed your contention that you suffered instead from chronic obstructive pulmonary disease (COPD) and not asthma during basic training. However, the Board noted that COPD and asthma are both potentially disqualifying conditions which would prevent you from serving in the Marine Corps. The Board also noted, despite your contentions, that you disclosed a pre-service history of asthma and chronic bronchitis to a Navy Medical Officer on 4 May 2001.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 28 December 2021. The Ph.D. initially observed that although you now contend you suffered from PTSD, you did not provide any clarifying information about the trauma related to your PTSD. The Ph.D. noted that your in-service records do not contain evidence of any mental health diagnoses or psychological/behavioral changes indicating any mental health conditions. The Ph.D. concluded by opining that the preponderance of available objective evidence failed to establish you were diagnosed with or suffered from a mental health condition on active duty that contributed to the determination of your reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) when you enlisted you were given a clean bill of health at MEPS; (b) MEPS staff did not find nor detect any abnormalities in relation to cardio or pulmonary functions; (c) while at boot camp you showed symptoms of pneumonia; (d) no conclusive diagnosis was ever made by a Navy Medical Officer at boot camp specializing in pulmonary medicine; and (e) there was no prior asthma condition or symptoms upon your enlistment leading to your erroneous enlistment. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your 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 concurred with the AO regarding any mental health issues, and also separately concluded that you were appropriately separated with an ELS because you clearly had disqualifying medical conditions upon entry into the Marine Corps. Additionally, the Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your pre-service medical issues, symptoms, and/or conditions, whether it was asthma or COPD or chronic bronchitis, you would have likely been disqualified from enlisting.

The Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors. You clearly failed to disclose your history of childhood asthma and chronic bronchitis. The Board noted that in the Marine Corps, your revised RE-3F reentry code stands for “failure to complete recruit training,” and is an appropriate code to apply in your case when separated due to disqualifying medical issues initially discovered during initial recruit training. The Board also noted that your RE-3F reentry code may not prohibit reenlistment, but requires that a waiver be obtained. Recruiting personnel are responsible for determining whether you meet the standards for reenlistment and whether or not a request for a waiver of your reentry code is feasible.

Additionally, 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 separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Marine Corps cases where processing under a more serious basis is appropriate and where characterization of service under other than honorable conditions (OTH) upon discharge is warranted. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, home loans, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, 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 discharge, and even under the liberal consideration standard, the Board concluded that your case clearly merited your receipt of an ELS with an RE-3F reentry code, and that such characterization and reentry code were proper and in compliance with all DoN directives and policy at the time of your discharge.

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,

3/3/2022

