



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: 7499-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 4 March 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 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 to the Kurta 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).

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 Navy with the option of participating in the █
█ and conducted your enlistment physical on 3 February 2015, in which you provided negative responses for having experienced recurrent back pain or problems, receipt of medical care other than minor illnesses within the previous 5 years, or having been advised to have any operations or surgery. At that time, your Report of Medical examination noted clinical observations of "normal" for observation of your "spine, other musculoskeletal." You began a

period of active duty on 8 October 2015 and began your initial recruit training, which included physical training as part of the ██████████; however, you were seen by medical due to reports of back pain which resulted in an x-ray series for scoliosis on 19 January 2016. Your results were reviewed on 5 February 2016 by a qualified doctor of osteopathic medicine who diagnosed you with symptomatic thoracolumbar scoliosis due to levoconvex curvature of your spine at a Cobb angle of greater than 30 degrees, specifically at 40 degrees in your case. Based upon the required physical qualifications for naval service, the doctor identified your condition as medically disqualifying and not correctible to meet standards. Commanding Officer, Training Support Center, ██████████, reviewed the medical diagnosis and determined that your disqualifying medical condition affected your potential performance of expected duties, to include posing a risk if you were retained for further active duty service. You were notified of processing for administrative separation for the reason of erroneous enlistment as evidenced by a condition that existed prior to entering military service and for which you would have been found disqualified if the condition had been known or properly identified prior to your entry onto active duty. You were afforded the opportunity to elect all applicable rights; you elected to consult qualified counsel, to submit a written statement for consideration, to receive copies of documents which would be considered, and to review of action on your case by the general court-martial convening authority (GCMCA). After consulting with legal counsel, you elected to waive your rights to submit a statement and to review by the GCMCA. The recommendation for your administrative separation included a copy of your 5 February 2016 diagnosis, which is now part of your official service record. On 9 March 2016, you were discharged with 5 months and 2 days of total active service. As a result, you received an entry-level service (ELS) discharge with uncharacterized service and a reentry code of "RE-3E."

The Board carefully weighed all potentially relevant factors, such as your desire to upgrade your characterization of service, your participation in the ██████████, the lack of misconduct during your active service, your strong desire to reenlist and continue serving, your post-service clemency matters to include your anti-bullying youth program, and your contentions, to include but not limited to: that your in-service diagnosis was erroneous as evidenced by multiple post-service medical reviews of your condition; that, although you did not desire to establish entitlement a medical disability separation, a medical board would have either identified the diagnostic error or identified that your condition was correctible; that the decision whether your condition affected your future ability to perform military duties should not have been made without the input from a medical board; that the continuation of the medical diagnosis in your records and your reentry code are errors which interfere with your ability to seek reenlistment; that your administrative discharge was unfair because you were not afforded an opportunity to "correct deficiencies"; and, that a "General Discharge" is inequitable.

First, the Board notes that you received an uncharacterized discharge and not a characterization of "General (Under Honorable Conditions)." The nature of your ELS reflects no misconduct or deficiency in either conduct or performance on your part; rather, it simply indicates the existence of a non-adverse condition which should have disqualified you from enlistment but was not discovered until after your entry onto active duty. With respect to an ELS resulting in an uncharacterized discharge, rather than "Honorable," the Board observed that the nature of your uncharacterized ELS complies with all applicable directives regarding service for a period of less than 180 days, and the Board observed no evidence from your active service which would merit

the extraordinary exception of an “Honorable” characterization for the length of time you served. Additionally, the Board notes that an erroneous entry based on a disqualifying medical condition is not a “deficiency” of performance or conduct which might receive an advisement of the need for corrective action with an opportunity to correct deficiencies.

With respect to your in-service diagnosis of a disqualifying physical condition, the Board considered your evidence that your condition is potentially less severe than originally diagnosed; however, your evidence indicates at least in part that the improvement in your condition resulted from post-service treatment and therapy. The Board credited that your diagnosis was made by a qualified medical specialist during the due course of providing medical care. Regardless of the differing post-discharge opinions of other medical professionals, which you outline at length but have only provided in limited part, the Board found no evidence of error during your in-service diagnosis of a condition which appears subject to change over time and also found no evidence, beyond your own speculation, that your pre-existing condition might have met the regulatory requirements of service-aggravation necessary to qualify for a medical board during your period of entry-level service. As such, the Board determined that the processing of your ELS for erroneous entry due to a physically disqualifying condition was neither in error nor an abuse of discretion.

Further, recognizing your desire to seek reentry, the Board expressly considered your contentions with respect to your reentry code. Because your pre-existing and potentially disqualifying condition has clearly been diagnosed both during and after your military service, regardless of severity, the Board assessed that your current reentry code serves to ensure proper review of your potentially disqualifying condition and, if applicable, of any request for a waiver of such condition. Specifically, the Board found that your “RE-3E” reentry code is neither erroneous nor unjust. 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 the 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 is attached 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,

3/22/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]