



**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: 7514-21

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 limitation 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 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 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.

Prior to enlisting in the Marine Corps, you enlisted in the U.S. Air Force Reserve (USAFR). On 24 August 2005, you were discharged from the USAFR for reasons unknown to the Board.

You subsequently enlisted in the Marine Corps and commenced active duty on 31 October 2005. Your USAFR pre-enlistment physical on 26 May 2005 and self-reported medical history both

noted no psychiatric or neurologic conditions, symptoms, abnormalities, or history. Your pre-enlistment medical history and examination both noted undergoing right knee surgery in 2001 and that you currently had post-surgery hardware (e.g., plate(s), screw(s), rod(s) or pin(s)) in your leg. However, on your Marine Corps enlistment application you expressly denied: (a) ever being in any regular/reserve branch of the Armed Forces, and (b) ever being rejected for enlistment or induction in any branch of the Armed Forces.

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 officers, 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 entry level performance and conduct due to not meeting Marine Corps physical/medical standards. The Board noted that in blocks 24 through 28 of your DD Form 214 it states: "Uncharacterized," "MARCORSEPMAN par 6205," "JGA1," "RE-3P," and "Entry Level Performance and Conduct," respectively. Such DD Form 214 notations collectively refer to an entry level Adsep (ELS) by reason of entry level performance and conduct.

Ultimately, after only serving for forty-six (46) days on active duty you were discharged from the Marine Corps with an uncharacterized ELS on 15 December 2005 and assigned an RE-3P reentry/reenlistment code. 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.

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 4 February 2022. The Ph.D. initially observed that your service record indicated you were discharged due to a knee condition. 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 suffered from a mental health condition on active duty that would have influenced the circumstances of your ELS.

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: (a) you developed an anxiety condition due to your military training that has led to several years of treatment and medication, (b) you currently have a service-connected Department of Veterans Affairs (VA) disability rating of 70%, and (c) you are asking your character of service be changed because your dedication to duty deserves such a characterization. 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 the lack of any service-connected mental health issues, and also separately concluded that you were appropriately separated with an ELS because you clearly had a pre-service disqualifying medical issue that surfaced following your entry into the Marine Corps. The Board also noted that your service record included a "Page 11" entry dated 15 December 2005 where you acknowledged your Adsep and RE-3P reentry code due to "Right Knee Pain Post Surgery With Retained Hardware."

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. The Board noted that in the Marine Corps, your RE-3P reentry code stands for "failure to meet physical/medical standards," and is an appropriate code to apply in your case when separated due to certain disqualifying medical issues. The Board also noted that your RE-3P 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, home loans, 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 virtually no bearing on previous active duty service discharge characterizations. 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-3P 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.

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 officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumed that you were properly processed for separation and discharged from the Marine Corps for entry level performance and conduct for circumstances involving post-surgery right knee pain issues.

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,

3/24/2022

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Executive Director

Signed by: █