



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. 889-22
Ref: Signature Date

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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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 May 2022. The names and votes of the members of the panel 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 23 July 1987. On 30 October 1987, as a recruit in basic training, you received nonjudicial punishment for being derelict in the performance of your duties by cigarettes and a lighter in your footlocker. On 3 March 1988, you received nonjudicial punishment for five instances of unauthorized absence. On 4 March 1988, you received a formal written warning concerning financial dealings, unauthorized absence, and not conforming to the Uniform Code Of Military Justice.

You subsequently submitted a request to be discharged under Other Than Honorable (OTH) conditions in lieu of a trial by court-martial. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Marine Corps on 7 June 1988, with an OTH, your narrative reason for separation is

“MARCORSEPMAN par 6419,” your separation code is “KFS1,” and your reenlistment code is “RE-4.”

In your petition, you requested that your discharge characterization be changed to Honorable and that you be provided disability payments. In support of your request, you explained that you made the best out of a difficult situation while you were in the Marine Corps. You further state that you broke your leg while you were in the Marine Corps and you suffer from post-traumatic stress disorder (PTSD) as a result.

In reviewing your request for an upgrade of your discharge, the Board applied the factors set forth in the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In review of the entirety of your petition and your official military personnel file, the Board determined that there was no error or injustice in the assignment of your OTH characterization of service. The Board observed that you did not provide any materials for it to consider in terms of clemency or in mitigation, other than your statement that you have PTSD as a result of a broken leg. Further, you did not, provide any clinical or other evidence with which the Board could review to evaluate your assertions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

With respect to your request for disability payments, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member’s disability imposes unreasonable requirements on the military to maintain or protect the member. In denying your request for a disability discharge, the Board observed that there were no findings that you were unfit during service, nor did you provide any evidence of unfitness. Further, the Board observed that there is no indication that you were discharged from the Marine Corps based on any perceived medical condition, but rather because of your repeated misconduct, which culminated in your discharge under OTH conditions in lieu of a trial by court-martial. Accordingly, the Board found insufficient evidence of error or injustice to warrant 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,

6/14/2022

