



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: 1223-22
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 11 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the Navy and began a period of active service on 14 June 2004. From the period beginning on 16 June 2004 through 22 June 2004, you sought medical treatment for back pain, resulting in your diagnosis of scoliosis. As a result of the foregoing, on 2 July 2004, you were notified of the initiation of administrative separation proceedings by reason of defective enlistment and induction due to erroneous enlistment as evidence by your diagnosis of scoliosis, at which point, you waived your right to consult with counsel. You were notified of the initiation of administrative separation 18 days from the date you entered onto active duty. On 8 July 2004, the separation authority approved and directed your discharge from naval service. On 13 July 2004, you were discharged with an uncharacterized character of service because you failed medical/physical procurement standards.

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 desire to upgrade your character of service. You contend your diagnosis of scoliosis was aggravated during your active service, and you now received compensation as a result of your injury. The Board noted that you were notified of your separation process within 180 days of the beginning of your period of active service. Please note an uncharacterized character of service does not attempt to characterize service as good or bad. Applicable regulations authorize an uncharacterized character of service if the processing of an individual's separation begins within 180 days of the individual's entry on active service. Naval regulations authorize administrative separation for recruits who fail to meet medical/physical procurement standards. Members who were not medically qualified under procurement medical fitness standards when accepted for enlistment, or initial entry training will be separated. In regard to your contention that you receive benefits from the Department of Veterans Affairs due to your medical condition, the Board considered that decisions reached by the Department of Veterans Affairs to determine if former service members rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization. The Board determined you were issued the appropriate character of service and reason for discharge. 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 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,

3/25/2022

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Executive Director
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