



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: 3527-22
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 20 May 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).

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 Marine Corps and began a period of active service on 2 March 1998. Prior to your enlistment into the Marine Corps, on 26 September 1997, you stated on your Report of Medical History (SF 93) that you had no significant past medical history. In April 1998, you underwent medical evaluations for back and ankle pain, and disclosed you had existing back and ankle injuries due to two motor vehicle accidents in 1989 and 1996. You were diagnosed with chronic right ankle pain, existing prior to enlistment (EPTE). On 18 May 1998, your commanding officer recommended your discharge due to fraudulent entry. On 20 May 1998, you were notified of the initiation of administrative separation proceedings by reason of

defective enlistment-fraudulent entry, at which point you waived your right to consult with counsel. On 21 May 1998, the separation authority approved and directed your discharge. You were discharged, on 26 May 1998, with an uncharacterized character of service by defective enlistment and induction.

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 characterization of service and contentions that you disclosed your previous injuries to your recruiter and believed your injuries to be healed. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In reviewing your application, the Board noted you requested to have your characterization of service changed from Dishonorable to Honorable or General (Under Honorable Conditions). Your record shows that you received an uncharacterized entry level separation and not a Dishonorable characterization of service.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found that you failed to disclose your prior injuries on your 26 September 1997 Report of Medical History. Therefore, the Board was not persuaded by your argument that you disclosed your injuries to your recruiter. Based on these factors, the Board determined the initiation of your administrative separation proceedings by reason of fraudulent entry to be appropriate. Additionally, since you were notified of the initiation of separation proceedings 79 days after entering active service, applicable regulations authorize the issuance of an uncharacterized entry level character of service. In reviewing your record, the Board did not find your service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. 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,

6/10/2022

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Executive Director

Signed by: █