



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 3631-22
Ref: Signature Date



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 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 10 June 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 Marine Corps and began a period of active service on 9 February 2015. Your initial urinalysis test, on 11 February 2015, revealed positive metabolites for use of Oxazepam, a controlled substance for which your medical records did not indicate a prescription. After being informed of your rights, you elected to make a statement in which you denied use of any controlled substances and asserted your belief that your test sample had been mixed up with that of another recruit. However, Commanding Officer, Recruit Training Regiment, processed you for administrative separation due to fraudulent enlistment, and you were discharged with uncharacterized service on 13 March 2015.

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 to

General (Under Honorable Conditions) and your allegations of error and injustice that included contentions that your urinalysis test sample was switched by another recruit, that the recruit acknowledged his actions, and that both of you were separated so that the command could avoid court-martialing the drill instructor who supervised the urinalysis. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board thoroughly examined the available evidence of record and did not find evidence supporting your contention of error regarding the urinalysis results. With respect to your uncharacterized discharge, the Board observed that you served on active duty for less than 180 days and noted that the regulatory guidance regarding separations of service members in an entry-level status specifies that service shall be uncharacterized unless the characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of military duty when approved on a case-by-case basis by the Secretary of the Navy. Finally, the Board noted that this rare exception regarding characterization does not apply under the reason for which you were separated. As a result, 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. Therefore, the Board concluded that your administrative separation for fraudulent entry with uncharacterized service was neither erroneous nor unjust. Accordingly, the Board determined that your request does not warrant 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,

6/15/2022

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Executive Director

Signed by: █