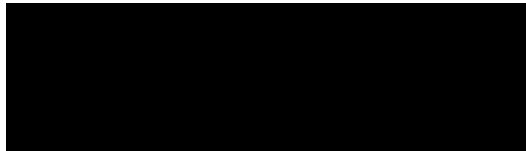




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490



Docket No: 4430-22
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 29 August 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 Inactive U.S. Marine Corps Reserve (USMCR) delayed entry program (DEP) on 23 March 1973 and, requested to be assigned to extended active duty within 180 days. On 20 September 1973, a medical evaluation determined you were not suitable for induction into the Marine Corps due to injuries suffered during an automobile accident on 7 May 1973. As a result, on 16 October 1973, you were discharged from the USMCR DEP due to your inability to report to active duty.

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 for service credit for your DEP time based on contentions that your recruiter would not allow you to get on the bus to Parris Island after being sworn in for active duty.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined there was no error or injustice with your record. In reviewing your record, the Board concluded that your entire service during the DEP period was inactive since individuals that enter the Marine Corps under the DEP are not carried in a pay status while awaiting assignment to active duty. Since you were discharged before you were brought on active duty, the Board found that you were not entitled to any pay for your service from March 1973 to October 1973. The Board was not persuaded by your arguments of injustice based on the recruiter's decision not to allow you to immediately enter active duty. Ultimately, the Board found that the decision not to allow you to immediately enter active duty was, more likely than not, a decision based on the needs of the Marine Corps. This decision falls under the discretion of the Marine Corps and the Board found no evidence that an abuse of discretion exists in your case. While the Board noted it was unfortunate that you were involved in a motor vehicle accident while in a DEP status and this accident resulted in your disqualification from active duty, the Board found these circumstances insufficient to merit changing your inactive status during the period in question to active. 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,

9/14/2022

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