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

[redacted]
Docket No: 5226-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 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).

You enlisted in the Navy and commenced active duty, on 6 May 1997, out of the Delayed Entry Program (DEP). You originally signed your DEP enlistment on 18 June 1996. Your pre-enlistment physical examination, on 4 April 1996, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. You did admit to pre-service marijuana use in 1992 on your enlistment application.

You tested positive for marijuana on a urinalysis test upon arrival at initial recruit training. On 22 May 1997, your command notified you of administrative separation processing for a defective enlistment and induction by reason of erroneous enlistment due to your positive urinalysis test. You waived your rights to consult with counsel, submit a written statement for consideration, and to General Court-Martial Convening Authority review of the discharge. Ultimately, on 29 May 1997, after completing only 24 days of active duty service, you were discharged from

the Navy for erroneous entry with an uncharacterized entry level separation (ELS) and assigned an RE-4 reentry code.

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 an Honorable characterization of service and contentions that: (a) you were told that your discharge would be upgraded to honorable six months after your discharge, (b) your recruiter indicated that your time spent in the DEP would count towards your total active duty service, (c) you feel that your youth and inexperience caused you to trust in the leaders without checking for yourself that what they committed to actually was followed through on, or question it when the papers did not reflect their promises, (d) you are not seeking additional back pay but seeking an honorable discharge and full service with the Navy be shown as active, (e) you come from a very proud military family and it was your honor to serve, and (f) you would like to take care of your family and being granted the time and discharge adjustments will help you gain access to Department of Veterans Affairs (VA) benefits that will assist you and your family. 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 determined that your erroneous entry, as evidenced by your positive drug urinalysis, outweighed these mitigating factors. The Board ultimately determined that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record in your brief active duty service. The Board determined the record clearly reflected your misconduct was intentional and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct clearly merited your ELS, and that such separation was in accordance with all DoN directives and policy at the time of your discharge. As a result, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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Regarding your request for service credit, the Board unequivocally disagreed with your position that your DEP time counts toward your overall active service. The Board reviewed your enlistment contract and nowhere does it state that DEP service is counted for active duty service. Therefore, the Board determined you are misinterpreting the enlistment contract clause you specifically cited on your petition. In making this determination, the Board noted that you did not provide any substantive evidence to corroborate or substantiate your contentions about DEP service accruals or automatic discharge upgrades. Even assuming arguendo that either your recruiter or Recruit Training Command Great Lakes personnel did make such inaccurate representations, the Board concluded none of those personnel could contractually bind the Navy to terms inconsistent with the plain language of your enlistment contract. As a result, the Board concluded that you received the correct net active service calculations based on your record of service. 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,

8/15/2022

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