



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

█
Docket No: 5230-22
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 initial 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 reconsideration application on 14 October 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 entered active duty on 15 June 1976. On 6 July 1976, you underwent a mental health evaluation. The Depot Psychiatrist (DP) determined that you were a training failure who could not meet minimum standards due to: (a) inaptitude, (b) want of readiness or skill, (c) defective attitude, and (d) inability to expend effort constructively. The DP determined that you did not present an incapacitating physical or mental disability and concluded that you did not have a mental or physical disability warranting your discharge by reason of physical disability. The DP declined to make a psychiatric diagnosis or disposition, and determined that there was no requirement for your psychiatric hospitalization at the time.

On 8 July 1976, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP.

On 12 July 1976, your chain of command weighed in on your possible administrative separation. Your Platoon Commander (PC) recommended your discharge and noted that you: (a) lacked self-discipline, (b) were a slow learner, (c) were immature, (d) failed to display motivation, (e) failed to meet disciplinary standards, and (f) were disobedient/openly disrespectful. The PC specifically stated:

This recruit is actively seeking a discharge from the Marine Corps. He is unwilling to participate in training and has refused to SI. His attitude is apathetic in nature and his performance reflects this. The depot psychiatrist states that he is not responding to training then discharge becomes a command responsibility. Remedial training has had little affect [sic] on this recruit.

You Battalion Commander (BC) reached a similar conclusion. The BC recommended your discharge with an "RE-4" reenlistment code. The BC stated:

█ is a 19 yr. old immature youth who is totally undirected. He has zero self-discipline and is completely void of motivation. He is a failure in this disciplined environment and will not continue training.

On 14 July 1976, your command notified you of their intent to administratively separate you by reason of unsuitability due to your defective attitude. You acknowledged receipt of the notice and waived your right to make any statement.

On 16 July 1976, an Aptitude Boad (AB) convened in your case. The AB recommended your discharge for unsuitability with an RE-4 reentry code, in part, because you did not maintain a good disciplinary record during training and were unwilling to return to the training program. The AB stated:

This member's general qualifications do not warrant retention in the service. Member is not in need of hospitalization and has not completed recruit training. The member has been counseled concerning his deficiencies and afforded a reasonable opportunity to overcome them. Member's condition existed prior to entry into naval service and has not been aggravated by service. If discharged will not be a menace to self or others. It is recommended that member be discharged by reason of unsuitability. Member has been afforded an opportunity to submit a statement in his behalf and any statement submitted was considered before a final recommendation was made.

The AB specifically recommended a General (Under Honorable Conditions) characterization of service (GEN) for unsuitability with an RE-4 reentry code. Ultimately, on 20 July 1976, you

were discharged from the Marine Corps for unsuitability with an Honorable discharge and assigned an RE-4 reentry code. In this regard, the Board determined you were assigned the correct narrative reason for separation and reentry code based on your factual situation.

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 change your narrative reason for separation and contentions that: (a) you did not have a motivational problem as reflected on your DD Form 214, and (b) the Department of Veterans Affairs (VA) determined that you have a service-connected anxiety disorder. 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. The Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors. First and foremost, the Board disagreed with your contention that you did not have a motivational problem. Your service record clearly indicated during your brief active duty service that you were a disciplinary problem that was determined to get discharged by any means possible. The Board also determined that your VA diagnosis was temporally remote to your active duty service and was unrelated to your behavior. Thus, the Board concluded that your lackluster boot camp performance and misconduct was not due to mental health-related conditions or symptoms whatsoever.

The Board did not believe that your record was otherwise so meritorious to deserve a change in your narrative reason for separation, separation code, and reentry code. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Furthermore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. The Board determined that the record clearly reflected your active duty misconduct and substandard performance was intentional and willful and justified your adverse narrative reason for separation, separation code, and RE-4 code upon separation.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a narrative reason or reentry code to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board generally will not summarily grant certain relief solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Additionally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations, narrative

reasons for separation, and reentry codes. As a result, the Board determined that there was no impropriety or inequity in your narrative reason for separation, separation code, and reentry code, and the Board concluded that your case clearly merited your receipt of an RE-4 reentry code for unsuitability, and that such narrative reason, separation code, and reentry code were proper and in compliance with all DoN directives and policy at the time of your discharge. 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 changing narrative reason for separation, separation code, and reentry code or granting clemency in your case. 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,

10/18/2022

