



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

■
Docket No: 5619-22
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 19 September 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 U.S. Marine Corps and began a period of active duty on 14 February 1990. On 15 February 1990, a recruiter interview regarding waiver action was conducted and you admitted to the following infractions: misdemeanor threat, no insurance, using marijuana 175 times, using cocaine 50 times, using LSD three times, and using marijuana mixed with cocaine three times from 12 January 1983 to 4 February 1987. In addition, you stated that you no longer wanted to be in the Marine Corps and requested to return home. As a result, on 21 February 1990, your commanding officer recommended to the separation authority that you be discharged with a fraudulent enlistment/entry level discharge by reason of drug abuse. On 26 February 1990, the separation authority agreed with your CO and, on 28 February 1990, after serving fourteen days of active duty, you were so discharged with an uncharacterized entry-level separation.

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 discharge to an honorable characterization of service and your contentions that, (1) you were separated for pre-service drug abuse and there was no significant evidence for such an accusation, (2) you should have been given the opportunity to attend rehabilitation for this “bogus” accusation, (3) the Department of Veterans Affairs (VA) has recognized that you were discharged honorably and your DD 214 lists your characterization of discharge as uncharacterized, (4) you are 10% service connected for hearing loss and are now disabled in a wheel chair for chronic inflammatory demyelinating polyneuropathy, for which you spent 110 days in a █ and (5) you would like to gain 100% disability as you incurred this disease at boot camp.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your failure to disclose your significant pre-service drug abuse, outweighed these mitigating factors. Contrary to your assertion that the evidence of your preservice drug abuse was bogus, the Board found the evidence of your pre-service drug abuse to be credible and noted that you signed the documentation relied upon by the Marine Corps in processing your administrative separation. Further, the Board noted Marines separated within the first 180 days of entry on active duty are assigned an uncharacterized entry-level separation unless they meet the criteria for an exception to policy. The Board found no evidence you met any of the criteria for such an exception. Finally, decisions reached by the VA to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Marine Corps. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Marine Corps when determining a member’s discharge characterization of service. As a result, the Board found that your administrative separation for fraudulent enlistment remains appropriate based on evidence you attested to through your signature. Therefore, 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request for a 100% disability rating for your service connected disability condition, the Board concluded the Department of the Navy has no authority to grant you a disability rating for VA purposes. Any issues related to VA disability ratings must be addressed directly with the VA. Based on their finding, the Board took no action on this aspect of your petition.

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,

10/6/2022



Executive Director

Signed by: █