



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

██████████
Docket No. 5643-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 November 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 this 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 United States Navy and commenced a period of active duty on 9 October 1984. On 22 October 1984, while in your initial training period, you received an Administrative Counseling (Page 13) which notified you of your academic test failure and directed you to participate in Mandatory Night Study. On 23 October 1984, you again received a Page 13 notifying you of academic test failure and directed you to participate in Mandatory Night Study and complete an Academic Remedial Training Program. On 28 November 1984, you received your final Page 13, notifying you that you failed to improve noted deficiencies as evidenced by "Failing Test 2 (23) T-I (22) (27)" and informed you that you were eligible for administrative separation (ADSEP) processing. On 29 November 1984, your Recruit Evaluation Report noted that "the reason for failing tests could probably be attributed to the total lack of attention at study periods and in classes." Your Company Commander and Division Officer recommend ADSEP processing be initiated.

On 3 December 1984, you were served a Notification of Administrative Separation Processing, informing you that you were being considered for ADSEP from the naval service by reason of "Entry Level Performance and Conduct" as evidenced by repeated academic failure. You waived your right to consult with qualified counsel and did not object to your discharge. On 14 December 1984, you were discharged from the Navy for by reason of "Entry Level Performance and/or Conduct" with an "Entry Level Separation" characterization.

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 discharge characterization and contention that: (a) you were medically discharged for failing the final hearing test after your wisdom teeth were removed and suffered an infection that permanently damaged your cochlea, and (b) the Department of Veterans' Affairs (VA) designated your service as Honorable. For purposes of clemency and equity consideration, the Board noted you provided VA documents.

After thorough review, the Board concluded that your discharge characterization was factually and legally sufficient, and did not warrant relief. The Board noted that an "Entry Level Separation" (ELS) will occur when the individual has fewer than 180 days of continuous active service and is therefore considered to be in an entry level status. The "Character of Service" will be uncharacterized and listed as "Entry Level Separation," except in the following circumstances: (1) when an Other than Honorable (OTH) characterization is authorized under the reason for separation and is warranted by the circumstances of the case, and (2) when the Secretary concerned, on a case-by-case basis, determines that a characterization of service as Honorable is clearly warranted by the presence of unusual military duty. After thorough review of your record, the Board did not find your performance demonstrated unusual military duty which would warrant an Honorable characterization of service. Further, the VA's designation of your service as Honorable for purposes of extending you veterans' benefits does not affect the characterization assigned by the Navy at the time of your discharge. Only the Secretary of the Navy has the authority to characterize the service of a member in an entry level status as Honorable. Finally, the Board highlighted that the basis of your separation was "repeated academic failure" vice a medical discharge as you assert in your petition. Therefore, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

11/17/2022

Deputy Director