



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

█  
Docket No: 5743-22

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 30 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).

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 Marine Corps and entered active duty on 27 January 1998. Your pre-enlistment physical, on 26 January 1998, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, abnormalities, or history. You expressly denied ever having a painful or "trick" shoulder or elbow, or having any other orthopedic issues or injuries on your medical history. Additionally, on your self-reported pre-service medical history, you stated you were currently in good health, not taking any medications, and you specifically denied any and all other medical conditions or notable injuries.

While still in initial recruit training, you underwent a medical screening examination at Marine Corps Recruit Depot, █. You disclosed to the Medical Officer (MO) that you previously dislocated your shoulder approximately sixteen (16) times. The MO confirmed your medical history with your father on 29 January 1998. The MO noted that your shoulder and orthopedic issues were not discovered or disclosed on either your self-reported medical history or during your pre-service medical examination. The MO also noted that you did not have a documented enlistment waiver in place for your shoulder issues. The MO determined that you were not physically qualified and did not meet the minimum physical standards for enlistment, and concluded that medical board proceedings would not be appropriate. The MO noted your condition was unlikely to change if retained on active duty, but opined that your return to military service might be possible after surgical correction. The MO recommended your uncharacterized entry-level separation (ELS).

On 4 February 1998, your command initiated administrative discharge action by reason of defective enlistment and induction due to a fraudulent enlistment as evidenced by “recurrent left shoulder dislocation.” You waived your rights to consult with counsel and to submit a written statement. Ultimately, after only serving for fourteen (14) days on active duty, you were discharged from the Marine Corps for a fraudulent enlistment with an uncharacterized ELS, on 10 February 1998, and assigned an RE-3F reentry/reenlistment code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation at the time as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

On 30 August 2021, this Board denied your petition for relief. The Board determined that the mental health clinical records you submitted from your current medical provider did not provide a basis upon which to grant relief, given that they were totally unrelated to your shoulder issues.

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: (a) the Reviewing Authority Medical Discharge Board of Review was not contacted or petitioned at the time of your separation or within three years because you did not understand the protocols and was in jail by then anyway, (b) the correction should be made in the interest of justice and closure, (c) some of your service records may be missing or switched with another recruit at time of separation because the relevant documents considered at previous hearings do not match with the documentation you have, (d) witnesses have not been contacted to corroborate your claim, and (e) you have been incarcerated since early 2000 and do not have a working knowledge of the rules and regulations regarding discharge reviews. 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. The Board also concluded that there was no convincing evidence your service record was switched with another recruit at your separation. Moreover, the Board determined that a fraudulent

enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Marine's eligibility for enlistment. The Board concluded you fraudulently enlisted when you clearly intentionally failed to disclose your pre-service history of multiple shoulder dislocations. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your extensive pre-service shoulder injury history, you would have likely been disqualified from enlisting.

The Board noted that in the Marine Corps, your RE-3F reentry code stands for "failure to complete recruit training," and is an appropriate code to apply in your case when separated due to disqualifying medical issues initially discovered during initial recruit training. The Board also noted that your RE-3F reentry code may not prohibit reenlistment, but requires that a waiver be obtained. Recruiting personnel are responsible for determining whether you meet the standards for reenlistment and whether or not a request for a waiver of your reentry code is feasible.

The Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Marine Corps cases where processing under a more serious basis is appropriate and where characterization of service under Other Than Honorable (OTH) conditions is warranted. Additionally, 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. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your case clearly merited your receipt of an ELS with an RE-3F reentry code, and that such characterization 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 upgrading your characterization of service, changing your 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,

10/7/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]