

DEPARTMENT OF THE NAVY

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

> Docket No: 5937-22 Ref: Signature Date



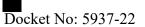
Dear Petitioner:

This is in reference to your application for correction of your husband's 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 26 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).

Your husband, hereinafter referred to as Petitioner, enlisted in the Marine Corps and began a period of active duty on 19 October 1965. On 21 June 1966, Petitioner was evaluated by a medical provider and diagnosed with bronchial asthma. On 16 August 1966, a medical board convened, and opined that Petitioner's diagnosis of bronchial asthma was appropriate and recommended Petitioner's for administrative discharge. On 29 August 1966, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) totaling five days. He did not appeal his punishment. On 21 September 1966, Petitioner received his second NJP for UA. Again, he did not appeal his punishment.

Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.



Based on the information contained on Petitioner's Armed Forces of the United States Report of Transfer or Discharge (DD Form 214), Petitioner was separated from the Marine Corps on 23 September 1966, with an "Under Honorable Conditions" characterization of service, his narrative reason for separation is "BuMed Inst 1910.2D," and his reenlistment code is "RE-4."

In your petition, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to have the Petitioner's discharge character of service upgraded and contentions that Petitioner's record does not show any disciplinary actions to warrant any other discharge than Honorable. The Board also considered your assertion that Petitioner was recommended for the Bronze Star. For purposes of clemency and equity consideration, the Board noted your submission of supporting documentation on behalf of the Petitioner.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and weighed it against his overall service. As a result, the Board determined significant negative aspects of his service outweighed the positive aspects and continue to warrant a General (Under Honorable Conditions) characterization. While the Board took into consideration positive aspects of Petitioner's service, the Board determined his two NJPs during a period of service totaling less than 11 months outweighed these positive aspects. Ultimately, the Board did not find his record so meritorious that it warranted a fully honorable characterization of service. 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 Petitioner's 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.

