



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

█
Docket No. 7707-22
Ref: Signature Date



Dear █

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 you did not file your application in a timely manner, the statute of limitation was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 25 January 2024. 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).

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.

A review of your service record reveals that you enlisted in the Marine Corps and commenced a period of active duty on 1 November 1972. On 25 February 1974, you received nonjudicial punishment for absence from your appointed place of duty. On 12 July 1974, you were convicted by a special court-martial (SPCM) of two instances of disrespect, disobedience, and a 72-day period of unauthorized absence (UA). On 8 November 1974, you received nonjudicial punishment for a one-day period of UA. On 9 January 1975, you received nonjudicial punishment for nine-day period of UA and disobedience. On 8 May 1975, you were reviewed by an Informal Physical Evaluation Board, which found you to have pes planus, developmental,

existed prior to your entry, and was considered not aggravated by your service or a ratable condition within the service Disability Evaluation System. On 3 June 1975, you were convicted by a SPCM of disobedience and assault. Your sentence included the award of a bad conduct discharge (BCD).

On 17 October 1975, you again received nonjudicial punishment for two periods of absence from your appointed place of duty and disrespect. On 2 February 1976, you requested to be placed on appellate leave pending the execution of your BCD. Ultimately, you were discharged, on 30 March 1976, with your BCD was reflected on your discharge paperwork as a discharge under other than honorable conditions.

In 1985, you filed an application with the Naval Discharge Review Board (NDRB) seeking an upgrade to your discharge. The NDRB denied your request, explaining that, "the applicant's numerous serious violations of the UCMJ were more than mere 'indiscretions.'" The NDRB also explained that it "found no circumstance to mitigate the discharge awarded and that the discharge was not too harsh for the record of service."

You also filed a petition with this Board in 2006. This Board informed you by letter dated 10 August 2006 that it had denied your requested relief, as follows:

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, and assertion that your discharge is a life sentence. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct, which resulted in four NJPs and two court-martial convictions. Finally, the Board noted that you requested immediate execution of the discharge, thus eliminating any opportunity for your restoration to duty during which you might have earned a better characterization of service. Accordingly, your application has been denied.

You filed a request for reconsideration of this denial in 2014. By letter dated 13 April 2015, this Board informed you that it denied your request for relief, finding that the new material you provided was insufficient to change its prior decision.

In your current petition, you request that the Board reconsider its denial of your request for clemency in the form of an upgrade to your BCD, that it reconsider its denial of your request for medical retirement, that you receive permanent medical retirement with at least 30% disability, and that you receive any and all back pay dating back to the appropriate effective date of your medical retirement. You also request, in the alternative, that your case be inserted into the Disability Evaluation System (DES) for evaluation. In support of your request for clemency, you state that, since your discharge, you have grown significantly as human being and member of society. You provided a written declaration in support of your request, in which you describes your background, motivations for service, the facts and circumstances surrounding your misconduct, and your post-service activities, including your attainment of higher education as well as describing the achievements of your children. With respect to your request for a disability retirement, your provided a medical record from 1972, which you contend does not

mention your Pes Planus, but later, in 1975, you were found by a medical board to have Pes Planus, which the medical board determined existed prior to your entry.

The Board carefully reviewed your petition and all supporting documentation that you provided and disagreed with your rationale for relief. With respect to your request for an upgrade of your discharge characterization, the Board determined that, despite its application of clemency factors set forth in the Wilkie Memo, you provided insufficient new material to change its previous denials of your request, and its rationale for denying this request remains the same as set forth in its prior letters to you.

With respect to your request for a service disability retirement, the Board determined there was insufficient support for your request. In reaching its decision, the Board observed that in order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. In its comprehensive review of the entirety of your request, the Board determined that you were found to have the unfitting condition of pes planus while you were in service, and it was determined to have existed prior to your entry into service. Thus, your condition was by its definition not considered to be covered within the DES. In addition, the Board also considered that, even assuming, arguendo, that you had a potentially unfitting condition within the meaning of the DES while you were on active duty, your punitive discharge would have taken precedence over such disability processing. 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, _____

2/26/2024

