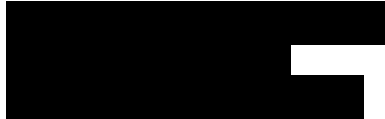




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 8194-22
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 7 December 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 entered active duty with the Marine Corps on 19 November 1997. On 12 December 1997, you received a medical evaluation and were diagnosed with Asthma. As a result, you were notified of pending administrative separation action by reason of erroneous enlistment. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of erroneous enlistment with an uncharacterized characterization of service. The SA approved the recommendation and, on 19 December 1997, you were discharged with uncharacterized characterization of service.

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 characterization of service to Honorable and contention that you deserve an Honorable since you were discharged for a disability condition that was later rated by the Department of Veterans Affairs (VA). For purposes of clemency consideration, the Board noted you provided VA documents.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that you were properly assigned an uncharacterized entry level separation based on your time in service. While the Board to considered your argument that you deserve a characterized separation based on the VA's decision to assign you a disability rating, the Board was not persuaded by it. The Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy (DoN) and have no bearing on previous active duty service discharge characterizations. Service regulations direct that members discharged within their first 180 days of active duty service are to be assigned an uncharacterized entry-level separation. While there are exceptions to this policy, the Board did not find any that apply in your case. Specifically, the Board determined you were not discharged based on a disability that was incurred or aggravated by your active duty service. Instead, the Board noted that you were discharged for a disability condition that existed prior to entry and would have been disqualifying for enlistment had it been discovered during your induction processing. 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 assigning you an Honorable characterization or granting an Honorable characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

12/23/2022

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Executive Director

Signed by: █