



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: 8618-22
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 9 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 enlisted in the U.S. Marine Corps and began a period of active duty on 26 September 2005. You were granted a waiver upon entry to active duty for the illegal use of a controlled substance while in the Delayed Entry Program. You began a period of unauthorized absence (UA) on 14 February 2006 that lasted until 15 March 2006. After being medically evaluated on 30 March 2006, you were diagnosed with Depression and Personality Disorder Not otherwise Specified, Existing Prior to Entry (EPTE). You received non-judicial punishment (NJP), on 5 April 2006, for your 29 days UA. Subsequently, you were notified of separation processing for fraudulent enlistment. After you waived your right to consult with counsel and an administrative discharge board, your Commanding Officer made his recommendation, on 10 April 2006, to discharge you with a General (Under Honorable Conditions) (GEN) characterization of service. The Separation Authority concurred with the recommendation and directed your discharge on 13 April 2006. Prior to being discharged, you were given a counseling warning stating you were not being

recommended for reenlistment. On 21 April 2006, you were discharged with a GEN and assigned a RE-4 reentry code.

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 upgrade your discharge to Honorable and contention that you want to reenlist to pursue a career in a field of study and service that better suits your talent. You assert that you had a dying family member in need, wanted to sort out these issues, but made poor decisions in an effort to help. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and fraudulent enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that you intentionally withheld medical information that was disqualifying for military service. Further, the Board noted you failed to provide any supporting documentation with your application that shows that your diagnosed personality disorder and depression, the preexisting conditions that formed the basis for your fraudulent enlistment, was erroneous. Finally, the Board weighed your misconduct and fraudulent enlistment against your brief period of active duty service. As a result, the Board found that significant negative aspects of your active duty service outweigh the positive aspects and continue to warrant a GEN characterization of service. 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,

1/3/2023

