



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. 0267-23

Ref: Signature Date

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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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 February 2023. 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 began a period of active duty on 15 November 2004. Prior to active duty, on 13 April 2004, you responded negatively to questions on a "Report of Medical History" Form DD 2807-1 which specifically asked about any current or former instances of asthma, breathing problems, inhaler use, or shortness of breath. On 6 December 2004, during Training Day 12 (TD 12) you were dropped from training for pneumonia, and a history of asthma, after recent complaints of chest pains and hyperventilation. Additionally, your recruit evaluation remarks reflect that you stated "you had asthma in your chest in the past since approximately the age of 10 years old". On 12 January 2005, you waived your rights on a "Medical Statement Rights Acknowledgement / Waiver of Rights" form prior to completing a Voluntary Medical Statement, when you disclosed in writing that you failed to tell the MEPS

doctor about your medical history of asthma, albuterol inhalers, sinus medication, and allergy shots having last visited a civilian doctor during June of 2003 for such treatment. You additionally indicated you did not disclose the health problems to any other Marine. Following those statements, your commanding officer recommended an administrative discharge for “fraudulent entry for pre-service undisclosed history of asthma” with a reenlistment code of RE-3P. A medical officer’s confirmation of undisclosed history of “asthma – confirmed by CMRs” accompanied the recommendation. On 21 January 2005, the separation authority approved the recommendation for administrative discharge, and directed your Uncharacterized Entry-Level Separation from the Marine Corps by reason of fraudulent entry.

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 discharge character of service and contentions that you did not voluntarily make a statement regarding undisclosed medical history, and that it was not a true statement when given. You further assert that you made a statement only as directed by personnel at boot camp, and the records you provided to MEPs medical staff regarding a shoulder injury should have enabled the staff to research your records for other information you previously failed to disclose. Lastly, you assert that you lied when you wrote that you had not disclosed the information to any other Marine in your statement, such as your recruiter, and that your recruiter suggested not providing MEPs doctors with the subject history due to the length of time since any occurrence. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your narrative reason for separation is appropriate in your circumstances and authorized by regulatory guidance. In making this determination, the Board noted that a Marine who intentionally fails to provide medical information that is later determined to be disqualifying for service may be discharged for fraudulent entry. The Board determined your failure to disclose your medical history during your enlistment processing supports your reason for discharge. The Board was not persuaded by your arguments and found that the preponderance of the evidence supports the actions the Marine Corps. Furthermore, regarding your characterization of service, the Board noted that applicable regulations authorize an Uncharacterized Entry-Level separation if the processing of an individual's separation begins within 180 days of the individual's entry on active service, as in your case. As a result, the Board determined your discharge is correct and remains appropriate. 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 granting you the relief you requested or granting relief 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,

3/11/2023



Executive Director

Signed by: 