

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 953-23 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.

A three-member panel of the Board, sitting in executive session, considered your application on 15 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 U.S. Navy and began a period of active duty on 13 April 2022. On 13 June 2022, you were found disqualified from service by a Clinical Psychologist for a history of major depressive disorder, suicide attempts and psychiatric hospitalizations. The Psychologist's report noted that you did not disclose your medical history during your enlistment processing. Further, the Psychologist was not able to confidently submit a recommendation for a waiver and you were deemed not qualified for retention due to your mental health history and suicide attempts. Subsequently, your Commanding Officer (CO) recommended to the Separation Authority (SA) that you be discharged for fraudulent entry with an uncharacterized characterization of service. The SA accepted the recommendation and directed you be discharged for a fraudulent entry. You were so discharged on 19 July 2022 and assigned an RE-4 reentry code.

Unfortunately, the documents pertinent to your administrative separation are not in your 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 19 July 2022 with an uncharacterized characterization of service, your narrative reason for separation is "Fraudulent Entry," your separation code is "JDA," and your reenlistment code is "RE-4."

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 for an upgrade in your reentry code and contentions that the reentry code was given due to you failing to disclose a suicide attempt, you acknowledge this qualifies for fraudulent enlistment, and you don't believe your previous medical history prevents you from service. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that there was no error or injustice with your assigned reentry code. In making this finding, the Board considered the clinical psychologist recommendation that they could not recommend you for a general duty waiver based on your past medical history. The Board further determined your failure to divulge your medical history upon entry into the service was significant evidence that you fraudulently enlisted. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a RE-4 reentry code. 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 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.

