



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

██████████
Docket No. 2715-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 April 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 5 November 1996. On 18 September 1997, you received non-judicial punishment (NJP), for two days of unauthorized absence. You were awarded restriction and extra duties for two days along with forfeiture of pay and reduction in rate to E-1, the latter two punishments were suspended for six months. Following the NJP, you were issued a counseling warning stating you were being retained in the naval service but warned that further misconduct may result in further administrative action.

On 13 March 1998, you went to medical after falling on ice and you started having right hip pain. During the consultation, it was found that you had retained hardware in your hips. Subsequently, it was reported that you did not disclose your preexisting condition upon entry into the Navy. As a result, the Commanding Officer (CO) notified you for separation for Fraudulent Entry into naval service. The CO made his recommendation to the Separation Authority (SA) that you be discharged with a General (Under Honorable Conditions) characterization. The SA accepted the recommendation and directed you be discharged. You were so discharged on 14 May 1998.

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 characterization of service and to reinstate your paygrade to E-2, along with your contentions that your recruiter told you not to disclose your hip surgery and you just followed instructions, you desire to continue your service to the country, and you want to work as an engineer helping the military at your local military base. 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 concluded that your discharge was proper and equitable under standards of law and discipline and that your assigned characterization accurately reflects your conduct during your period of service. As a result, the Board concluded significant negative aspects of your service outweighs the positive aspects and continues to warrant a General characterization. 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.

The Board noted your request to be reinstated to the paygrade of E-2. However, in reviewing your record, the Board found that you were discharged in the paygrade of E-2. So the Board took no action with regard to your request.

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,

4/27/2023

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Deputy Director

Signed by: █