



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. 5378-23
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.

Although you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and review your application. A three-member panel of the Board, sitting in executive session, considered your application on 11 September 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 this 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).

Your previously petitioned this Board and were denied relief on 4 December 2014.

You enlisted in the United States Navy and commenced a period of active duty on 18 September 1989. On your enlistment physical, you did not disclose any disqualifying medical issues. On 6 October 1989, you were medically evaluated at the Naval Hospital Emergency Room, █ related to pain in your right knee. You reported that prior to your enlistment, you suffered a football injury which affected your right knee.

A medical board reviewed your case on 20 October 1989 and found that your knee injury was a “disqualifying medical condition” that “was neither incurred in nor aggravated by military service.” The medical board concluded that “[t]he injury occurred prior to enlistment. There was no recent history of trauma since arrival at Recruit Training Command.” You were notified of the board’s finding and waived your right to submit a statement in rebuttal.

On 7 November 1989, you were notified that you were being processed for an administrative discharge by reason of defective enlistment and induction. You were informed that you would be assigned an Entry Level Separation (ELS) and did not object to the discharge. On 17 November 1989, you were discharged from the Navy with an ELS by reason of erroneous enlistment and assigned an "RE-3E" 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 change your characterization of service from ELS to Honorable or Medical and your narrative reason for separation to Secretarial Authority and contentions that the treating physician at MEPS told you to cross out "YES" and change the response to "NO" on the section that says "Trick or Locked Knee" on your enlistment physical and you were able to return to playing football after your injury. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board concurred with the medical board that your disqualifying medical condition occurred prior to enlistment and that there was no history of trauma caused or aggravated by military service. "Erroneous Enlistment" is assigned when there is a circumstance or condition that would have disqualified the applicant from enlistment had it been known at the time of enlistment. The Board highlighted that this is different than "Fraudulent Enlistment," which would have been assigned had you purposefully withheld a disqualifying condition. Further, when a separation is initiated while a member is in entry level status (within the first 180 days of enlistment), service regulations direct the assignment of an uncharacterized entry level separation except in circumstances involving misconduct or extraordinary performance. After thorough review of your service record, the Board did not identify unusual circumstances involving personal conduct and performance of military duty that would support an Honorable characterization of service. As a result, the Board determined that there was no impropriety or inequity in your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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 supporting evidence, as described above, which will require you to complete and submit a new DD Form 149. Supporting evidence (i.e. 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,

9/19/2023

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