



**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. 7538-23  
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 8 December 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).

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 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 13 February 2004. On 3 May 2004, while at Infantry School at █, you were examined at the Sports Medicine and Reconditioning Therapy (SMART) Center for left foot, ankle, and/or leg pain, that increased with prolonged standing. You were x-rayed, no fractures were found, and you were placed on light duty. Three days later, on 6 May 2004, you returned to SMART for worsening toe pain. You were again x-rayed, and diagnosed with Hallux Limitus Bilaterally, or foot pain on both sides. You were prescribed physical therapy and continued light duty. On this date, you

were also administratively counseled concerning the physical condition Hallus Limitus Bilaterally. As corrective action, it was recommended you comply with your treatment plan. You were also notified of available assistance, and that if the condition continued to affect your performance, you could be processed for administrative separation. You were afforded the opportunity to submit a written rebuttal but declined to do so. The next day, on 7 May 2004, you were again seen at SMART, this time for pain in your right big toe. You were prescribed over-the-counter pain medication and continued light duty. On 3 June 2004, at a follow up appointment, you reported continued foot pain, and were recommended by medical for administrative separation. Eventually, you were notified of administrative separation processing, by reason of Convenience of the Government, Condition Not a Disability, uncharacterized, on 24 June 2004. Your processing was involuntary, and you were not entitled to an administrative separation board. On 4 August 2004, you were found physically qualified for separation, and signed a final report of medical assessment, acknowledging that you had a current condition, Hallux Limitus, limiting your ability to work in your primary military specialty. On 5 August 2004, you were discharged. Because you had not accrued one-hundred and eighty days of service, your separation was considered entry level, and thus your discharge was uncharacterized.

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 General (Under Honorable Conditions) discharge and your contentions that: (1) the separation you received was for failure to adapt and did not apply to you, (2) you were discharged for a medical condition that happened while on active duty, (3) you weren't given any real medical treatment, (4) you were told because you were 17 years old the Marine Corps did not want to deal with you, (5) you should have received a medical discharge under honorable conditions, and should be able to receive Department of Veterans Affairs (VA) benefits, (6) you noticed the injustice immediately, but were denied any information or options, (7) you were ordered to sign paperwork, (8) after separation, the VA refused to give you any information or assistance, and (9) you just recently learned of this option (BCNR) through a service member. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided; specifically, a copy of your DD Form 214, but 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 your assigned uncharacterized entry level separation remains appropriate based on your days of active service. While there are exceptions to this policy in cases involving misconduct or extraordinary performance, the Board determined neither exception applies in your case. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. Therefore, while the Board was sympathetic to your circumstances, 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.

Sincerely,

1/8/2024

