



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

█
Docket No. 9086-23
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 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 15 November 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).

You entered active duty with the Marine Corps on 22 January 1985. On 16 April 1985, a medical board diagnosed you with lower back pain (Lumbago), a condition that existed prior to enlistment (EPTE) and recommended you be administratively separated from the Marine Corps. The medical board report documented your medical history of low back pain that existed five years prior to your enlistment in the Marine Corps. You acknowledged the medical board's decision and choose not to submit a rebuttal. The separation authority (SA) approved and directed an entry level separation by reason of physical disabilities, EPTE. On 19 April 1985, you were so discharged.

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 upgrade your characterization of service and contentions that you had no physical impairments prior to joining the Marine Corps, no physical

impairments were found during your entrance exam at the military entrance processing station (MEPS), and your injuries resulted from serving in the Marine Corps. You also contend that a local chiropractor diagnosed you with a slipped disc and a pinched nerve that resulted from your service in the Marine Corps and you became a police officer, a field training officer, a patrol corporal, and an emergency response officer after discharge. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that you were properly assigned an uncharacterized entry-level separation based on your time in service. Service regulations direct that members discharged within their first 180 days of active duty service be assigned an uncharacterized entry-level separation. While there are exceptions to this policy for misconduct or exceptional performance, the Board determined that neither apply in your case. Further, 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. Finally, contrary to your contention that your injury resulted from serving in the Marine Corps, the Board noted that the medical board report documented your medical history of lower back pain five years prior to enlistment. The Medical Board also noted that the history of your lower back pain was not disclosed to the recruiter or the MEPS examining physician; thus explaining why you were allowed to erroneously enlist in the Marine Corps. 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. In reviewing the evidence in your case, the Board determined the presumption of regularity applies and you were appropriately discharged, while in an entry-level status, for a preexisting disability condition. Therefore, while the Board carefully considered the evidence you provided in mitigation and commends you for your post-discharge accomplishments, 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,

12/17/2023

