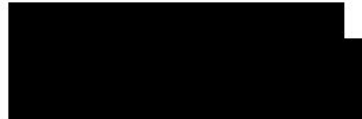




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 9215-23
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 reconsideration application on 17 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 enlisted in the U.S. Navy and began a period of active duty service on 23 June 2004. Your enlistment physical examination, on 24 June 2003, did not note any disqualifying medical issues. However, in October 2003, while you were in the delayed entry program, you injured your right knee playing football. You subsequently underwent arthroscopic surgery to repair a meniscus tear in your knee.

On your entrance physical examination, on 22 June 2004, at █, a Medical Officer (MO) noted your 2003 surgical repair to your right knee. On 3 July 2004, you were evaluated at the █
█ for an entry level medical separation because of your medical condition that existed prior

to entry (EPTE). The MO noted you had an unstable knee and that you did not have a medical waiver to come into service. The MO noted that your knee was correctable to meet Navy standards. On 13 July 2004, you stated your unstable knee EPTE, and you expressly understood you would receive an entry level separation (ELS) for your medical condition because it was a pre-existing condition. You also understood that if you wished to return to active duty, you would require a medical waiver. On 14 July 2004, your command issued you a "Page 13" entry where you expressly understood that you were not eligible for reenlistment due to medical. You acknowledged you may not reenlist in the Navy without prior approval of Navy Personnel Command, and that enlistment in any other branch of service would require a waiver.

On 19 July 2004, your command provided you notice that you were being processed for an administrative discharge from the Navy by reason of defective induction and enlistment into the naval service due to erroneous enlistment as evidenced by an EPTE physical condition. You elected in writing to waive your rights to consult with counsel, submit a written statement to the separation authority for consideration, and to General Court-Martial Convening Authority review of your discharge. Ultimately, on 27 July 2004, you were discharged from the Navy with an uncharacterized entry level separation (ELS) and assigned an RE-3E reentry code. In this regard, you were assigned the correct characterization, narrative reason for separation, and reentry code based on your factual situation as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

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 sole contention that you were injured and felt no one cared to help you. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy contained no known errors. The Board determined that your medical diagnosis and separation recommendation was clinically and medically appropriate. The Board determined there was no evidence in the record to suggest that your active duty diagnosis was erroneous given your pre-service injury and surgery. Based on your precise factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified in assigning you an uncharacterized ELS and an RE-3E reentry code. The Board also noted that, despite having an RE-3E reentry code, you could still submit a request for an enlistment waiver during the processing of a formal application for reenlistment through a recruiter.

Additionally, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Navy cases: (a) when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances, or (b) where processing under a more serious basis is appropriate and where characterization of

service under Other Than Honorable conditions (OTH) upon discharge is warranted. The Board determined neither exception applied in your case.

Therefore, 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,

11/27/2023

