



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. 10859-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 18 January 2024. The names and votes of the members of the panel 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 Kurta 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.

A review of your record shows that you entered active duty in the Navy on 4 August 1993. On 19 September 1993, you sought medical care at the █ because of an inability to run due to shortness of breath. You subsequently failed two physical fitness tests due to inability to complete the run. You stated that you did not have a diagnosis of asthma prior to enlistment but had to discontinue playing sports during high school because of breathing problems. On 27 October 1993, you underwent a medical board; the Board recommended separation based on your pulmonary function test, inability to perform physical training, and not meeting enlistment medical standards. The Medical Board further noted you did not provide a history of breathing problems during your enlistment physical examination on 5 November 1992 and concluded your asthma condition existed prior to entry on active duty. You were notified of administrative entry-level separation (ELS) due to erroneous enlistment and signed paperwork stating that you did not object to this discharge on 10 November 1993. You were subsequently

discharged for failed medical procurement standards on 18 November 1993 and received an uncharacterized ELS characterization of service. In 2009, you requested the Board grant you a disability discharge; the Board denied this request on 28 May 2010. In 2022, the Department of Veterans Affairs (VA) rated you as totally and permanently disabled.

For this petition, you request an honorable characterization of service and the narrative reason for separation to be changed to medical discharge vice an ELS. You argue that you did not have asthma when you entered boot camp and developed the condition while in recruit training. You include a letter from your current provider dated 27 November 2023 and VA documentation.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted you served a total of three months and 15 days on active duty, there are records in your file documenting you told medical personnel that you had a history of breathing problems that made you quit sports in high school, and that at the time you did not rebut the finding of enlistment in error. Consequently, the Board found it was more likely that you incurred asthma prior to your enlistment in the Navy.

In addition, the Board found the Naval Military Personnel Manual (MILPERSMAN) Article 3630200, authorizes separation of a member during the first 180 days of service when the member has been found unqualified for further service and Article 3610300 specifies that the separation will be uncharacterized and described as ELS. Article 3610300 further clarifies that for a separation in the first 180 days of active duty to be deemed as honorable there would have to be evidence of unusual circumstances involving personal conduct and performance of naval duty and the Secretary of the Navy would have to approve the characterization on a case-by-case basis. The Board found there was no evidence in your record demonstrating any exceptional circumstance to warrant an honorable discharge. Consequently, the Board determined that your administrative discharge for erroneous enlistment was valid and there is no error or injustice in your record warranting correction.

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,

2/12/2024

