



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

■
Docket No. 494-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 January 2024. 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 Navy and commenced active duty on 28 July 1998. On 17 December 1998, you received orders home to await final action following the Physical Evaluation Board recommendation of "unfit for duty." On 31 December 1998, Navy Personnel Command directed that you receive an involuntary physical disability discharge and you were so discharged on that date with an uncharacterized entry-level separation.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you desire to apply for Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board noted you provided documentation from the VA.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that there is no error in your discharge or

uncharacterized entry-level separation. Specifically, your DD Form 214 documents that you were discharged in accordance MILPERSMAN 3620270, Physical Disability as a result of the findings of a Physical Evaluation Board. Further, since you were notified or discharged for non-misconduct reasons within the first one-hundred-eighty-days of service, you were appropriately assigned an uncharacterized entry level separation. While there are exceptions to policy in cases involving misconduct or extraordinary performance, the Board determined neither exception applied in your case. Additionally, while the Board considered the VA's decision in your case, it concluded that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. 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 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 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,

2/27/2024

