



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. 6579-23
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 21 March 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.

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 2 August 1989. Shortly thereafter, you went to medical complaining of low back pain. On 11 August 1989, you were referred to the Naval Hospital, █ for consultation with the Department of Orthopedics and subsequently underwent a medical board on 15 August 1989. The medical board diagnosed you with scoliosis, with chronic low back pain, existing prior to entry (EPTE).

On 16 August 1989, you were notified of administrative entry level separation due to erroneous enlistment, your right to counsel, and your right to submit statements in rebuttal. You signed paperwork stating you did not object to this discharge, waiving your right to counsel and rebuttal. You were subsequently discharged on 25 August 1989. Your Certificate of Release or

Discharge from Active Duty (DD Form 214) states an uncharacterized entry level separation with a narrative reason for separation as erroneous enlistment – enlisted in error.

In your petition, you contend when you went for your swim qualification, it was discovered that your sacrum was not properly fused. You argue you warrant a medical discharge with an Honorable characterization of service.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted the medical board report states you informed medical personnel you had severe back pain 1-2 weeks prior to entry on active duty, that you were “diagnosed with scoliosis more than a year ago,” and that “X-rays revealed thoracic scoliosis.” Moreover, the Board noted you were referred to a medical board less than two weeks into active duty training. Consequently, the Board found it was more likely that you incurred scoliosis prior to your enlistment in the Navy and that you did not meet the physical standards for enlistment.

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. Further, Article 3610300 specifies that the separation will be uncharacterized and described as entry level separation. The Board noted you served a total of 24 days on active duty. 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, your uncharacterized entry level separation was proper, and there is no error or injustice in your record. 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,

3/28/2024

