



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. 2707-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, initially considered your application on 18 July 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

A review of your record shows that you enlisted and commenced active duty on 27 May 2009.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 17 September 2012 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct (Serious Offense)," your separation code is "HKQ," and your reenlistment code is "RE-4."

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 for an upgrade of your characterization of service so that you can obtain benefits from the Department of Veterans' Affairs (VA). You also request a service disability retirement. In support of your requests, you assert that you recently had surgery on your back and explained that, when you were on active duty, you dropped a motor on your foot and you smoked "spice" to deal with the pain. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to submit any evidence in support of your claims. For the purposes of clemency and equity consideration, you provided letters of reference and a form that shows you applied for disability benefits through the State of California.

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. First, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were unfit at the time of your discharge. Second, the Board concluded that you were ineligible for disability processing or military disability benefits based on your misconduct based administrative separation that resulted in an Other Than Honorable characterization of service. Lastly, the Board also concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the Disability Evaluation System (DES) at the time of your separation. In its comprehensive review of the entirety of your request, the Board determined that you provided no evidence to support a finding that you had an unfitting condition within the meaning of the DES while you were in service.

Therefore, while the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Wilkie Memos 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.

Finally, the Board observed that you have been discharged for fewer than fifteen years, yet you did not provide evidence that you requested relief from the Navy Discharge Review Board (NDRB). As a result, the Board determined you have not yet exhausted your administrative remedies regarding your request to have your characterization of service upgraded. The NDRB is the designated authority to review and determine whether a service member's discharge was granted in a proper manner and was fair and equitable considering the regulations in effect at the time of the discharge. Thus, the Board took no action on your discharge upgrade requests and refers you to the NDRB. Information regarding the NDRB is available at its website, www.secnnav.navy.mil/mra/CORB/pages/ndrb/default.aspx.

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,

8/2/2024

