



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. 3542-24
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 request for reconsideration on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 August 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 reveals that you joined in the U.S. Army National Guard and served from May to August 1991, at which time you were discharged for failing to meet procurement standards. On 28 March 2002, you enlisted in the Navy Reserve. On 26 April 2013, you wrote a statement in which you explained that you injured your knee while running on a treadmill at █ during a period of Annual Training (AT). In your statement, you reported that you timely sought medical care and inquired about obtaining records to provide to your Navy Operational Support Center (NOSC), but that a doctor told you not to say anything as it would damage your Navy Reserve Career. After you returned to your unit, you began to miss drill periods and to pursue filing for Line of Duty Benefits (LOD). You wrote email messages to a

Yeoman at your NOSC explaining that you requested to be marked as authorized absences (AA) for your missed drills until you heard back on your LOD paperwork. You stated that it was difficult for you to drive long distances. You communicated as well with other members of the NOSC, and the Board reviewed the available communications. In one such communication, you were advised that, due to the fact that you were not current “for medical or dental” you would not be approved to receive an authorized absence. It was explained to you that you were “required to attend to be seen by a provider and sign your page 13. Failure to show for this DWE [drill weekend] will result in UA’s. Please make arrangements to participate this DWE. If you have any questions or concerns please let me know.” In the meantime, based on your failure to participate in unit drills, your command sought to process you for administrative separation. Thus, on 19 December 2013, you received a “Final Notification of Administrative Separation” from your commanding officer, which enclosed a notification of administrative separation and your rights in connection therewith.

You were ultimately issued a LOD letter on 7 March 2014. The LOD letter set forth a variety of responsibilities required of you, including, for example, that there were a variety of forms that you were required to complete. Such forms included, for example, a detailed plan of medical care from your physician, among other things. The letter also explained that if you were to be reviewed by a medical evaluation board (MEB), such MEB would be required to be completed by 24 May 2014. There is no evidence in your record, nor did you provide any, that you were at any time actually referred to be reviewed by a MEB. On 14 May 2014, you signed your notification of rights for administrative separation. On 11 June 2014, you were discharged due to unsatisfactory participation and assigned a General (Under Honorable Conditions) characterization of service.

In 2015, you filed a prior petition with this Board. By letter dated 21 July 2016, the Board denied your petition as follows:

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge, change unsatisfactory participation (U) to authorized absence (AA), request a medical retirement, and assertion that you were injured while on annual training (AT). Nevertheless, the Board found that these factors were not sufficient to warrant upgrading your discharge given your unsatisfactory participation and refusal to abide by Naval Reserve regulations. In regard to your assertion, the Board concluded that it is your responsibility to communicate with your commanding officer to ensure you are abiding by Naval Reserve regulations before deciding not to participate in required drills. Accordingly, your application has been denied.

In regards to requesting a medical discharge. Unfortunately, you are not eligible for a medical retirement due to your unsatisfactory participation in the Ready Reserve, receiving a general discharge, a separation code of HHJ, and a reentry code of RE-4. Further, unless a reservist is on active duty or a medical board is commended along with medical hold, reservist doesn't qualify for a medical retirement.

In your current request for reconsideration, as you did in your initial request, you request to have your discharge upgraded from General (Under Honorable Conditions) to Honorable and to receive a disability retirement. In support of your request for reconsideration, you provided, as new matter, a finding from the Department of Veterans' Affairs (VA), reflecting that you were awarded a 10% service connected disability due to right knee patellofemoral syndrome. You also made similar contentions as you did in your initial petition; specifically, that you injured your knee while on AT at Pearl Harbor, that your injury made you unable to drill, and that you sought an LOD finding, and it took a year to be approved. You argued that your LOD stated that you should have been reviewed by a MEB but instead you were separated with a General (Under Honorable Conditions) discharge. In summary, you argued that your knee injury was the main cause of your absences, that you were wrongfully denied Authorized Absences by your command, which did not take your injuries seriously, and that you should have been provided a MEB as instructed by your LOD. You also argue that you were punished too severely and, in weighing your discharge characterization, the Board should consider the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board carefully reviewed all of your contentions and the material that you submitted in support of your request for reconsideration and disagreed with your rationale for relief. In reaching its decision, the Board concluded that you provided insufficient evidence to support your request. With respect to your request for an upgrade to your discharge characterization, the Board observed that it did not appear that you provide new matter for the Board to consider; although you cited the Wilkie Memo. The Board evaluated your request in light of the Wilkie Memo and determined that its previous rationale for denying your request for an upgrade of your discharge characterization remains appropriate. Specifically, in consideration of the quality of your service, the Board determined that it appeared rational for your command to conclude that the positive aspects of your conduct and performance of duty outweighed the negative aspects of your conduct and performance of duty and that your service was not adequate for an Honorable characterization of service in light of your several unauthorized absences while in the Selected Reserve. The Board observed that, in its experience, the assignment of a General (Under Honorable Conditions) characterization of service due to unsatisfactory performance in the Navy Reserve is not an irrational or severe assignment of a characterization of service. Finally, the Board was not persuaded by your arguments regarding the delay in the issuance of the LOD and noted you were instructed by your command that you were required to attend drills and you chose not to do so.

With respect to your request for reconsideration of your request for a disability retirement, the Board also disagreed with your rationale for relief. At the outset, the new material that you provided appeared to consist primarily of post-service findings by the VA granting you service connection for a knee condition with a 10% disability rating. The Board did not find this to be persuasive because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. In your case, contrary to your assertion that you were to be reviewed by a MEB, there is no indication in your service record, and you provided none, that any of your treating

providers or any non-medical personnel in your command recommended that you actually be referred to a MEB or the Physical Evaluation Board for evaluation of your fitness to perform the duties of your rate. In fact, the available communications with your reserve unit appeared to indicate that you had failed to stay current with your medical and dental requirements, and that you refused to go to your unit despite repeated requests for you to report to your unit. Finally, the Board reiterated its rationale in denying your original request for a service disability requirement, finding that you provided insufficient new matter for it to change its decision. As a result, in light of all of the foregoing, the Board determined that you provided insufficient new matter for it to change its prior decision. 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,

8/22/2024

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