



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. 4421-24
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 14 June 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 Marine Corps and commenced a period of active duty on 21 March 1995. Prior to your enlistment, you disclosed a preservice knee injury that you incurred in 1993. Upon entering training, you underwent medical evaluations for left knee pain. On 7 April 1995, you were notified of the initiation of administrative separation proceedings as a result of defective enlistment and induction due to erroneous enlistment, at which point, you waived your procedural rights. Ultimately, the separation authority directed your discharge and you were discharged, on 11 April 1995, an uncharacterized entry level separation by reason of erroneous enlistment – left knee pain.

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 to change your discharge characterization to Honorable and contentions that you suffered an injury in boot camp and did not understand the

meaning of an uncharacterized discharge. For purposes of clemency and equity consideration, the Board noted you attached correspondence from the Department of Veterans Affairs (VA).

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your uncharacterized entry level separation remains appropriate. Service members processed for separation in their first 180 days of active duty are assigned an uncharacterized entry level separation. While there are exceptions to policy in cases involving misconduct or extraordinary performance, the Board concluded neither exception applied in your case. Regarding the VA's determination that your service was under honorable conditions, the Board determined that decisions reached by the VA to determine if former service members rate certain VA benefits do not affect discharge decisions made by the Department of the Navy. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Department of the Navy when determining a member's discharge characterization. Consequently, the Board was not persuaded by this evidence. Finally, the Board noted that your knee condition existed prior to your entry into the Marine Corps. 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,

7/3/2024

