

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 5622-24 Ref: Signature Date

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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 24 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 Navy and commenced active duty on 13 April 1993. On 19 July 1993, the Navy Physical Evaluation Board issued a finding that you were unfit to perform your duties due to a physical disability. You were assigned a 10% disability rating. On 26 July 1993, you were discharged with an uncharacterized Entry Level Separation (ELS) for a physical disability that existed prior to service.

On 13 July 1995, this Board previously reviewed your record pursuant to your application. At that time, it was determined you should have been discharged by reason of a service incurred disability, rather than one existing prior to enlistment. Accordingly, the Board found an error warranting corrective action and recommended your record be record to show you were discharged by reason of physical disability incurred during your period of naval service, and rated at 10%. You were subsequently issued a DD Form 215 indicating this correction to your official record. However, your uncharacterized entry level separation status remained unchanged.

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 of service and your contentions that 1) you were discharged due to a service incurred disability and were rated at 10%, 2) you were recently informed by the State of that due to your discharge status on your DD Form 214, you are unable to apply for a Veteran's vehicle registration tag and a state license stating that you are a Veteran, and 3) you recently moved to from the state of the state of

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined, in the absence of evidence to the contrary, that your uncharacterized ELS remains appropriate. The Board noted that service regulations direct the assignment of an uncharacterized ELS when a service member is discharged within their first 180 days of active duty. While there are exceptions to policy, the Board determined none applied in your case. 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. The Board was not persuaded by your arguments regarding the veterans' benefits you received in the State of since it has no control over the laws of individual states and individual State decisions have no bearing on previous active duty service discharge characterizations by the Department of the Navy.

Therefore, 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.

