



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

██████████
Docket No. 5880-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 21 November 2024, has carefully examined your current request. 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 included 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 in the Marine Corps and commenced a period of active duty on 27 January 2000. You received nonjudicial punishment on 4 August 2000 for holding down and duct taping a fellow Marine to his rack. On 26 September 2000, your commanding officer directed you to be seen by a medical professional to you in meeting weight control standards. On 21 February 2001, you received a written warning concerning your weight control failure. On 21 April 2001, you received nonjudicial punishment for drinking under age and for conspiring to alter your ID card. On 19 November 2002, you were notified of the initiation of administrative separation processing due to weight control failure. On 5 December 2002, you underwent your separation physical, and there is no indication contained in available medical records that you were referred to a medical evaluation board or that you had any potentially unfitting medical conditions. Thereafter, your squadron commanding officer, as well as your group commanding officer, endorsed recommendations to the separation authority that you be discharged. On 20 December 2002, the separation authority informed the Commandant of the Marine Corps that you would be separated due to weight control failure and you were so separated on 14 January 2003.

In 2023, you filed a petition with this Board, in which you requested that your discharge be changed to a medical disability retirement. In support of your request, you contended that you were recommended for a medical discharge while in service. You also asserted that your medical records reflect you were having knee and hip problems for most of your time in service. The Board considered your prior petition on 9 November 2023 and informed you that it denied your petition by letter dated 24 November 2023. In its decision, the Board explained that you provided insufficient evidence demonstrating that, while you were in service, you met the criteria for unfitness as defined within the Disability Evaluation System at the time of your discharge. Specifically, the Board explained that weight control failure is not a disabling condition as set forth in the disability evaluation system. Further, the Board observed that you provided no evidence that you had any unfitting condition while on active duty, including any conditions of the knee or hip that were deemed unfitting by any medical professional. In light of the foregoing standard applicable to the Disability Evaluation System, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that you were discharged after you were deemed to have failed weight control standards.

In your current petition, for reconsideration of your prior petition, you again requested a medical discharge or an Honorable discharge. You provided as new matter a finding by the U.S. Department of Veterans' Affairs (VA), which reflects that you have been awarded VA disability compensation for a variety of condition. In its review of your petition on reconsideration the Board again found that you provided insufficient evidence of an error or injustice in your discharge from the Marine Corps. With respect to your request for a medical discharge, the Board did not find your VA material to be persuasive. In reaching its decision, the Board observed that 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, as explained in its prior decision, the Board observed that you failed to provide evidence that would support you being eligible for disability (medical) retirement.

With respect to your alternative request for an upgrade to your discharge characterization, 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 a discharge upgrade and contentions raised in your application. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found insufficient evidence of an error or injustice in the assignment of the characterization of service. In reaching this decision, the Board observed that your receipt of nonjudicial punishment on two occasions provided the Marine Corps a rational basis for its assignment of your General (Under Honorable Conditions) characterization of service and you provided insufficient documentation to overcome the presumption that such assignment was in error or resulted from an injustice. 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.

Sincerely,

1/16/2025

