



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. 6535-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 21 August 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, 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).

During your enlistment process you completed a Record of Military Processing and admitted that you were previously rejected for enlistment. Further, on 14 July 1992, your Report of Medical Examination documented you suffered from severe Pes Cavus. On 27 August 1992, the Chief Bureau of Medicine and Surgery determined that you did not meet the established physical standards for enlistment due to your Pes Cavus condition but recommended a waiver of physical standards. You enlisted in the Navy and began a period of active duty on 5 January 1993.

On 14 January 1993, you were evaluated by a medical officer as a result of pain and enlargement of your right ankle during basketball. You were diagnosed with a Osteoarthritis of your right ankle; a condition determined to exist prior to your entry (EPTE) into the Navy. Consequently, you were recommended for entry level military separation. You were notified of the initiation of administrative separation proceedings by reason of erroneous enlistment due to your diagnosis of Osteoarthritis, Right Ankle, EPTE. Subsequently, you decided to waive your right to consult

with counsel and the separation authority approved your uncharacterized Entry Level Separation by reason of erroneous enlistment. On 21 January 1993, you were so discharged.

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 characterization upgrade and a “medical” discharge. You contend that: (a) you were injured badly in both ankles while in training and were released because of those injuries, (b) the board of veterans has agreed that you were injured during your time in service, (c) you are currently 20 percent service connected with an appeal in remand for both knees and hips as well, (d) you were a hundred percent healthy when you entered the Navy, (e) you were a scholarship offered basketball player that just graduated from high school and choose to serve his country instead, (f) you could not foresee or fully understand how a less than an honorable medical discharge would affected you years later. For purposes of clemency and equity consideration, the Board noted you provided copies of your Department of Veterans Affairs (VA) decision documents.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted you were appropriately assigned an uncharacterized entry level separation based on erroneous entry.

First, applicable regulations authorize an entry level separation if the processing of an individual's separation begins within 180 days of entry into active service. While there are exception to this policy in cases involving misconduct or extraordinary performance, the Board concluded neither exception applied in your case.

Second, the Board noted you were appropriately processed and discharged based on your erroneous enlistment. The Board determined your discharge is supported by the medical evidence included in your records that documents you were diagnosed with a preexisting disqualifying medical condition after your enlistment. Absent evidence the condition did not exist prior to your entry into the Navy, the Board concluded the presumption of regularity applies in your case. The Board was not persuaded by your contention that you were “100%” healthy when entering the Navy. The Board noted that you were previously denied enlistment and required a medical waiver based on your preexisting pes caves condition. These factors, and your extensive history of basketball activities, led the Board to conclude, more likely than not, you also suffered from a preexisting osteoarthritis condition of your ankle. Finally, the Board was not persuaded by your VA evidence since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based with no indication whether the VA took into consideration your service connected condition preexisted your entry into the Navy. Additionally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge decisions or characterizations.

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 the 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,

9/15/2024

