



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. 6984-24

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 reconsideration application on 20 September 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).

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.

You enlisted in the U.S. Navy and began a period of active duty service on 26 August 1988. During your enlistment physical examination, on 29 January 1988, and on your self-reported medical history, you disclosed having asthma. You represented to the Medical Officer (MO) that you had asthma since childhood (age five (5)), but that you were experiencing relatively few episodes of shortness of breath after age twelve (12). Based in part on your representations, the MO determined you were physically qualified to enlist.

However, within a few days after beginning initial recruit training, you reported to Sick Call complaining of wheezing and shortness of breath. Physical examination at such time revealed bilateral inspiratory and expiratory wheezing which cleared after the administration of bronchodilators. On 1 September 1988, your command issued you a "Page 13" warning (Page 13) noting that you were "non-swim qualified." The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

A Medical Board (MB) report in your case noted that you were treated at Sick Call on 12, 14, 16, and 29 September 1988. Your case was presented to an MO at ██████████. The MO diagnosed you with "Asthma, Existed Prior to Entry (EPTE), and recommended that you be discharged from the Navy.

You appeared before a MB on 3 October 1988. The MB opined that you did not meet the minimum physical standards for enlistment or induction and recommended that you be separated from the U.S. Navy by reason of erroneous enlistment. The MB determined that your medical condition was considered not to be the proximate result of the performance of active duty. The MB report noted that you did not elect to submit a rebuttal statement.

On 7 October 1988, your command provided you notice that you were being processed for an administrative discharge from the Navy by reason of defective induction and enlistment into the naval service due to erroneous enlistment as evidenced by your EPTE physical condition (Asthma). You elected in writing to waive your rights to consult with counsel and submit a written statement to the separation authority for consideration. You also expressly did not object to your discharge. On 24 October 1988, your command issued you a Page 13 where you acknowledged being informed of the authority and reason for your separation, as well as your reenlistment code. Ultimately, on 24 October 1988, you were discharged from the Navy with an uncharacterized entry level separation (ELS) and assigned an RE-3E reentry code. In this regard, you were assigned the correct characterization, narrative reason for separation, and reenlistment code based on your factual situation as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

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 reason for separation and contentions that: (a) you did not make any error of information, (b) the recruiter knew of all of your ailments and problems before enlisting, (c) there was nothing that you did not inform your recruiter of, (d) you thought you did everything a prospective sailor/soldier was supposed to do, and (e) you did not know of being able to receive any benefits until you spoke to someone in 2020. 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 your potentially mitigating factors were insufficient to warrant relief. The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contained no known errors. The Board noted that an erroneous enlistment discharge is appropriate in cases where the Navy mistakenly enlists

a service member with a preexisting disqualifying disability condition. The fact you disclosed your preexisting condition prior to your enlistment does not prevent the Navy from processing you for the disqualifying condition should it render you unfit for further military service. The Board determined that your medical diagnosis and separation recommendation was clinically and medically appropriate. The Board determined there was no evidence in the record to suggest that your active duty diagnosis was erroneous or unjust given your pre-service medical history and childhood diagnosis. Therefore, based on your factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified in discharging you for erroneous enlistment and assigning you an uncharacterized ELS and an RE-3E reentry code.

The Board noted that the RE-3E reentry code directly corresponds to: “inducted, enlisted, extended, or reenlisted in error,” and was an appropriate and permitted designation given the totality of the circumstances in your case.

Additionally, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Navy cases: (a) when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case, or (b) where processing under a more serious basis is appropriate and where characterization of service under Other Than Honorable conditions upon discharge is warranted.

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.

Sincerely,

10/3/2024

