



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

██████████
Docket No. 7281-24
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.

A three-member panel of the Board, sitting in executive session, considered your application on 7 November 2024. 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 include the Under Secretary of Defense for Personnel and Readiness Memorandum (Kurta Memo) and the 25 July 2018 Under Secretary of Defense for Personnel and Readiness Memorandum (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.

A review of your record shows that you enlisted in the Marine Corps and began active duty service on 6 June 2016. You were formally counseled on multiple occasions starting on 17 October 2017 for not attending formation. You were subsequently counseled for not being recommended for promotion to Corporal due to lack of leadership, responsibility, and judgment, on 13 December 2017, 7 March 2018, 9 August 2018, and 10 September 2018. You underwent nonjudicial punishment on 15 November 2018 for violating Article 86 (unauthorized absence) of the Uniform Code of Military Justice (UCMJ) and Article 92 (failure to obey a lawful order). On 26 November 2018, you were assigned to the Body Composition Program.

In January 2019 you went to medical due to shoulder pain and were referred to physical therapy in April 2019. On 14 October 2019, a Medical Evaluation Board (MEB) informed your commanding officer (CO) that your left shoulder pain was not ratable by the Physical Evaluation Board as the medical condition, shoulder pain, did not amount to a disability. Specifically, the MEB stated your pain at the shoulder “did not correlate with exam or imaging,” and “[b]ilateral shoulder MRIs demonstrated minor biceps tendinopathy but were otherwise unremarkable without derangement or injury to suggest instability.” Consequently, you were notified of administrative separation on the basis of a condition not a disability with a General (under honorable conditions) characterization of service. On 13 January 2020, you acknowledged your rights, waived your consultation with counsel, did not rebut the separation and acknowledged that your condition did not qualify as a naval service disability. You were subsequently discharged on 6 March 2020. Your DD Form 214, Certificate of Release or Discharge from Active Duty stated a General (under honorable conditions) characterization of service and narrative reason for separation as condition, not a disability.

For this petition, you request an upgrade to your characterization of service to honorable and to change the narrative reason for separation from condition, not a disability. You contend that you were improperly denied a medical evaluation board and that the condition for which you were discharged, your shoulder condition, is rated by the Department of Veterans Affairs (VA) as a disability. You submitted VA documents to support your contentions.

The Board carefully considered all factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta and Wilkie Memos. These included, but were not limited to, your contentions that you deserve a medical discharge. Upon review, the Board disagreed with your rationale for relief. The Board noted while on active duty you were seen extensively for your shoulder pain. You were referred to physical therapy and Sports Medicine as well as followed by your primary care manager. You underwent bilateral shoulder MRIs, and the examination findings were unremarkable. The Board further noted the VA service connected these conditions four years post-service. The Board found there was insufficient evidence to determine that you were improperly not referred to a medical board at the time of your discharge and concluded that there is no injustice or error in your record warranting relief.

With regard to your request that this Board upgrade your General (under honorable conditions) discharge, the Board noted that your date of discharge is less than 15 years ago, and you are entitled to a review by the Naval Discharge Review Board (NDRB). As you have not exhausted your administrative remedies, the Board deferred consideration of this request in order to allow you an opportunity to first seek relief through the NDRB.

Making a timely request to the NDRB will afford you the maximum opportunity to have your request considered for an upgrade of your characterization of service. Applying to the NDRB first allows a veteran potentially two reviews, with an opportunity for a final review by this Board if the NDRB does not grant the request. You may find guidance and a copy of the Application for Review of Discharge from the Armed Forces of the United States (DD Form 293) that may be submitted to the NDRB on the NDRB website at <https://www.secnav.navy.mil/mra/CORB/pages/ndrb/default.aspx>

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,

12/17/2024

