

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 8361-24 Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 November 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 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 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 Marine Corps and began a period of active duty on 5 February 1996. On 14 February 1996, you sustained a shoulder dislocation, and it was discovered that you had a preservice history of dislocations that required surgery. Consequently, you were recommended for administrative separation due to failing to meet entrance physical requirements. On 15 February 1996, you were counseled on erroneous enlistment due to a recurrent joint shoulder dislocation. Subsequently, you were notified of pending administrative separation action by reason of erroneous enlistment due to a condition not a disability. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of erroneous entry, with an uncharacterized entry level separation. The separation authority approved the recommendation, and on 28 February 1996, 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 to upgrade your discharge character of service and

change your reason for separation. You contend that: (1) you disclosed your injury prior to enlistment, (2) you were not hiding your injury and (3) you were cleared by MEPS. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that you were properly discharged for erroneous entry and assigned an uncharacterized entry-level separation based on your time in service. First, service regulations direct those members discharged within their first 180 days of active-duty service be assigned an uncharacterized entry level separation. While there are exceptions to this policy for misconduct or exceptional performance, the Board determined that neither apply in your case. Second, regardless of whether you informed MEPs of your prior history, the Board observed that you were later medically recommended for separation based on the Marine Corps' determination that you did not meet entrance physical requirements and erroneously allowed to enlist. Therefore, the Board determined erroneous entry was the proper basis for your administrative separation.

As a result, 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 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.

