



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

██████████
Docket No. 11100-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 December 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 commenced active duty on 13 March 2006. On 28 March 2006, your medical record indicated you were seen at the base medical clinic for a family history of Polycystic Kidney disease and referred for further evaluation. On 5 April 2006, you were recommended for Entry Level Separation (ELS) from the Marine Corps following your report to sick call for biltateral flank pain leading to a diagnoses of preexisting Polycystic Kidney disease. On 13 April 2006, you were notified of pending administrative separation processing for ELS due to a medical condition (Convenience of the Government – Condition Not a Disability). You declined to consult with legal counsel and waived your remaining rights in the process. You ultimately received an uncharacterized ELS discharge on 18 April 2006.

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 characterization to Honorable (HON) and change your name. You contend that the Department of Veterans Affairs

(VA) found that the Marine Corps made a clear and unmistakable error in the evaluation of your Polycystic Kidney disease and that you should have been service-connected at the time of your discharge. You further contend you would have received an HON discharge due to a service-connected disability had the error not been made, and that the error cost you unimaginably due to loss of disability compensation and loss of access to education, medical, and mental healthcare. Lastly, you contended you joined the Marine Corps after foster care and when you were discharged you had nothing and no one and have been chronically homeless since. Additionally, the Board noted you checked the “PTSD,” “Other Mental Health,” and “TBI,” boxes on your application but did not respond to the Board’s request for supporting evidence of your claims. For the purposes of clemency and equity, you provided your VA decision letter, an email stating your current name, and a HUD-VASH letter related to your chronic homelessness.

After thorough review, the Board concluded the available evidence insufficient to warrant relief. Specifically, the Board determined your uncharacterized ELS remains appropriate. Service regulations direct the assignment of an uncharacterized ELS when a service member is processed for separation within their first 180 days of active duty. While there are exception to this policy in cases involving extraordinary performance or misconduct, the Board determined neither applied in your case.

The Board also determined that you were properly discharged for condition, not a disability based on your diagnosis. In order to qualify for a disability discharge, a service member must meet certain criteria defined in the Disability Evaluation Manual (DEM). Specifically, a medical professional must determine that you are “unfit” for further military service¹. In your case, a medical professional specifically determined your condition did not meet the standards for unfitness under the DEM. The Board was not persuaded by the VA finding you allude to since it references an error committed by the VA vice Marine Corps. In addition, 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.

As a result, while the Board carefully considered the evidence you submitted and sympathizes with your circumstances, 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.

Regarding your request for name change, unfortunately, you must submit a court order establishing that your name has been legally changed in order for the Board to grant the relief. The Board encourages you to reapply with the necessary supporting evidence.

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. Additional records (e.g., court documents confirming your legal name change) may aid in rendering an alternate opinion. In this regard, it

¹ Generally, unfitness is described as being unable to perform the duties of your office, grade, rank, or rating as a result of a qualifying disability condition or suffering from a condition that causes danger to you or others.

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,

1/7/2025

