



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. 746-25
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 27 March 2025. 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.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows you enlisted in the Navy and commenced active duty on 16 November 2023. However, the application and medical documents associated with your enlistment are not available in the record. Additionally, your record is incomplete in that it does not contain the documentation associated with your administrative separation¹. However, your

¹ The Board noted you submitted NAVPERS 1910/31, the Administrative Separation Processing Notice, dated 17 June 2024, which indicates you were notified of separation processing by reason of defective enlistment due to erroneous enlistment as evidenced by a physical or mental condition that existed prior to entry into the naval service. The document further indicates you elected to consult with counsel; to submit a written statement for consideration by the separation authority; to obtain copies of documents that would be forwarded to the separation authority; and to exercise your right to general court-martial convening authority (GCMCA) review. However, the Board noted your official military personnel file does not contain your administrative separation documentation and, other than

Certificate of Release or Discharge from Active Duty (DD Form 214) indicates you were discharged, on 29 July 2024, by reason of erroneous entry, with an “uncharacterized” characterization of service, and assigned a RE-3E reentry code.

In your petition, you have requested medical retirement or “an honorable medical discharge,” award of your Enlistment Bonus for Shipping (EBSHP) , characterization corrected to Honorable, and entitlement to all applicable Department of Veterans Affairs (VA) benefits; including education benefits. You contend your administrative discharge is “flawed on multiple levels.” Specifically, you contend the following on your DD Form 149 and as discussed in your brief:

(1) You should have been medically retired from active duty with a compensable disability rating or given an honorable discharge for medical reasons.

(2) Under no circumstances should you have been separated under MILPERSMAN 1910-130. The use of this regulation was in error and violated “both the spirit and intent” of the regulation because it was designed to separate enlistees who were identified in the early (180 day) period of recruit training, who have a physical or mental condition, that was “unrevealed, erroneously waived when prohibited or deliberately concealed prior to enlistment.” You specifically contend the records clearly indicated you had been on active duty for 257 days and had completed basic military training on 1 February 2024.

(3) Even if MILPERSMAN 1910-130 was correct, it was applied incorrectly and denied you a “Medical Board (Physical Evaluation Board)” to which you were entitled. Specifically, the reference states a member may be separated if he has not been granted a “waiver” of physical standards for enlistment. “If a waiver was granted for the defect for which the member is now considered to be not physically qualified, member’s case must be processed under provisions of [SECNAVINST 1850.4E].”

(4) Navy records and evidence show that your prior medical condition and medical history were fully disclosed to the Navy prior to your acceptance onto active duty and the subsequent event-triggering lung collapse does not warrant the use of this separation regulation. In support of these contentions, you submitted a medical statement dated 12 October 2023 from [REDACTED] Medical Center, Thoracic and Cardiovascular Surgery Center, stating you had been evaluated and treated for a spontaneous pneumothorax in October 2022. The letter further stated you had “fully recovered” after treatment and placement of a chest tube; no longer required additional treatments; and had no activity limitations and a “positive prognosis over the next five years.” Additionally, you contend you were required to submit a document entitled “Level of Activity Statement ” for “enlistment personnel” to read. In section 4, when requested to “list all surgical, chiropractic, or other medical care that you required help for, other than minor conditions (e.g. the flu), within the last two years,” you noted the following: “Pneumonia, I made a full recover. Partial lung collapse, it was spontaneous and I made a full recovery.” Clearly there was no “concealment” of an existed prior to service (EPTS) medical condition.

the notification, you have not submitted the documentation in support of your contentions you were erroneously and unjustly discharged under MILPERSMAN 1910-130.

(5) The evidence emphatically shows a “tacit” waiver for active duty enlistment despite, as you admit, the lack of a specific document that gives a written waiver.

(6) There was no erroneous entry into active duty. Specifically, the finding that your enlistment was “erroneous” was not based on factual or regulatory finding.

(7) The underlying medical basis for separation is erroneous. Specifically, there was only one instance of pneumothorax two years prior to enlistment in October 2022, and the record erroneously states, or at best disconcertingly implies, multiple events in the medical records.

(8) The command authority that issued your separation received a recommendation that relied on medical records with serial errors and/or incorrect innuendo. Specifically, the medical record summaries were incorrect and misleading. “More importantly, they most probably were detrimental to the ultimate decision since they contained erroneous and exaggerated medical history or the least implied same.”

(9) The pulmonary specialists who treated you represent the “best medical evidence” that you were deployable and fit for duty post-surgery. Specifically, the opinion of the attending Pulmonologist “in the best position to forecast [your] fitness for active-duty service found [you] to be ‘deployable’ and fit for duty.” However, the physician who “diagnosed [you] with mild pneumonia (perhaps misdiagnosed) cleared [you] fit for submarine duty and sent [you] back to [your] quarters with anti-biotic treatment only and ‘light duty’ 12 days before [your 27 February 2024] admission to a civilian hospital for pneumothorax” is the primary medical source that determined you were unfit for retention.

(10) Given the contrary medical opinions and apparent contradictions in the record, you should have been given a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). Specifically, even assuming you were unfit for active duty service, a determination as to whether the pneumothorax reoccurred as a result of a service-connected event should have been made.

(11) Your agreement “to seek waiver from Center Commander” was based on poor and inadequate counsel which, at best, constituted ineffective assistance of counsel. Specifically, while overwhelmed by the separation notification, you “at some point spoke with a JAG officer” who failed to advise you of the multiple consequences of choosing to seek a “waiver.” As further proof of the JAG’s inadequacy, you contend that if he “went through [your] paperwork at all he certainly would have identified the multiple flaws/innuendo and potential incorrect use of MILPERSMAN 1910-130.” Further, you contend he implied that your character of service would be honorable and you would be eligible for VA benefits. Even when you returned to the JAG office and requested counseling based on the advice of your uncle, the same JAG officer who previously provided advice to you was the one to speak with you. Further, you contend that when you advised the JAG that you were giving him permission to discuss your case with your uncle, the JAG advised “he could not speak” with your uncle. Frustratingly, after your uncle arranged an appointment, the same JAG officer was assigned and he “once again didn’t advise [you] that [your] discharge would potentially be “uncharacterized” or that you would lose your EBSHP bonus or not be entitled to VA benefits.

The Board carefully reviewed your petition and the material you provided in support of your petition, as well as the contentions discussed above, and disagreed with your rationale for relief. The Board noted that, as of 2 October 2023, MILPERSMAN 1910-308 now defines entry-level status as “the first 365 days of continuous active military service” vice the previous time period of the first 180 days of continuous active duty. Further, Entry Level Separation is required to be uncharacterized except in those limited Navy cases: (a) when an Honorable discharge is clearly warranted by presence of unusual circumstances involving personal conduct and performance, and is approved on a case-by-case basis by the Secretary of the Navy or (b) where under other than honorable is warranted by circumstances of the case for administrative separation. The Board determined neither of these exceptions describe your circumstances.

Additionally, the Board considered the medical documents you submitted in support of your request for a medical discharge but noted they contain insufficient evidence indicating an error or injustice in your administrative discharge by reason of erroneous enlistment. After carefully considering the detailed interpretations and explanations discussed above and spelled out in detail in counsel’s brief, the Board determined the record does not indicate you received an enlistment waiver for your pre-service spontaneous pneumothorax. Further, even considering your submission of the 12 October 2023 letter and the Level of Activity Statement, the Board determined there is insufficient evidence these documents were provided to and considered by the decision makers when medically clearing you for enlistment. Without the initial enlistment medical documentation, the presumption of regularity assumes no waiver was granted and the requirement to process your case under the provisions of SECNAVINST 1850.4E was not triggered.

Further, with respect to your detailed discussion of the inadequacy of the JAG counsel, the Board determined there is insufficient evidence indicating an error or injustice warranting your requested relief.

In summary, the Board determined the evidence indicates you suffered a pre-service spontaneous pneumothorax and an in-service spontaneous pneumothorax² which, when considered by the Bureau of Medicine and Surgery, established you did not meet established physical standards. Further, the Board determined there is insufficient evidence available in the record or submitted by you, which clearly indicates that, prior to enlistment, you disclosed your October 2022 spontaneous pneumothorax and were granted a waiver. Therefore, the Board concluded your situation did not require processing under the SECNAVINST or referral to the MEB. Additionally, the narrative reason “erroneous entry” and, more specifically, the separation program designator (SPD) of “JFC,” was appropriately used to describe your situation because the record indicates you did not meet physical standards prior to enlistment and did not receive a waiver. The assigned RE-3E, which indicates “enlisted in error,” further demonstrates the record does not establish disclosure of the pre-service spontaneous pneumothorax. 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

² These facts that are not in dispute.

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,

4/15/2025

