

WASHINGTON DC 20370-5100

The Board did not concur with the conclusion of the designees of the [REDACTED] that your mental disorder was aggravated by your naval service. It noted that you fraudulently procured your initial entry into the Navy, as well as your education at the Naval Academy, by concealing your history of depression and at least one suicide attempt from the physicians responsible for assessing your physical qualification for naval service. You fraudulently procured your commission by once again failing to provide an accurate report of your medical history, and by concealing the suicide attempt you made while serving as a midshipman. Had you made full disclosure of your pertinent medical history when required to do so, it is very unlikely that you would have been admitted to Naval Academy or commissioned. It is difficult to assess the extent of your preexisting depressive disorder in the absence of your pre-service

medical records, and a truthful statement of your medical history; however, the Board was not persuaded that the disorder increased in severity beyond its natural progression during your brief period of creditable service following your graduation from the Naval Academy.

The Board concluded that although your misconduct was mitigated to some extent by the effects of your mental disorder, it would not be in the interest of justice for the Board to upgrade your discharge or change its basis. You were discharged pursuant to your request, thereby avoiding substantial jeopardy, to include forfeiture of pay and allowances, dismissal from the Navy, and a lengthy period of confinement. In addition, the Board noted that the Assistant Secretary of the Navy for Manpower and Reserve Affairs granted you substantial clemency when she awarded you a general discharge, even though a discharge under other than honorable conditions would have been appropriate and supportable. The Board also concluded that even if it were to assume, for the sake of argument, that your depressive disorder was aggravated beyond natural progression during your brief period of commissioned service, it would not be in the interest of justice or equity to grant you disability benefits for a condition that should have precluded you from entering the Navy.

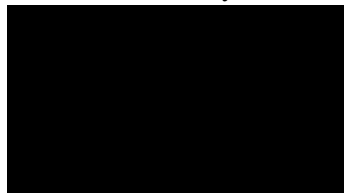
In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by

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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,



Enclosure

DATE: 21 MAY 2004

FROM: CASE REVIEWERS LT
RESIDENT, AND LCDR
MEDICAL CENTER [REDACTED]

PSYCHIATRY
STAFF PSYCHIATRIST, NAVAL

TO: CHAIRMAN, BOARD FOR CORRECTIONS OF NAVAL RECORDS.

SUBJECT: REQUEST FOR COMMENT AND RECOMMENDATIONS IN THE CASE OF FORMER

REF: 10 U.S.P.C. 1552

ENCLOSURES:

1. BCNR file.
2. Service record.
3. Medical record.

I. NOTE: Pursuant to reference (A), the subject requested a correction of his Naval record as indicated in enclosure (1). A review of enclosures (1) through (3) was conducted to form opinions about the following issues:

- At the time of commission of certain offenses, did the subject have a severe mental disease or defect?
- As a result of a severe mental disease or defect, was he unable to appreciate the nature and quality, or wrongfulness of his conduct?
- Did he suffer from a mental disease or defect rendering him unable to understand the nature of
 - the proceedings against him or to conduct or
 - cooperate intelligently in his defense²
- Did he suffer from a depressive disorder prior to
- his commissioning in 1999? If so was that disorder aggravated by his naval service on or after 26 May 1999?

II. FACTS OF THE CASE:

A. [REDACTED] attended the [REDACTED] from 1995 through 1999 and graduated with a Bachelor of Science degree on 26 May 1999.

B. [REDACTED] failed to report for duty to the [REDACTED] on 6 November 1999. He subsequently drove across the country until mid-December 1999. He reported suicidality during this time period, and a handgun and suicide note were found in his hotel room prior to a psychiatric hospitalization.

C. [REDACTED] was admitted to the psychiatric ward of [REDACTED] from 19 December 1999 to 8 January 2000.

[REDACTED] was placed in pre-trial confinement upon discharge from the hospital and three charges were brought against him: violation of Article 85, UCMJ, Desertion; violation of Article 87, UCMJ, Missing Movement; and violation of Article 90, UCMJ, Disobedience of a Lawful Order from a Commissioned Officer.

E. On 8 February 2000, an Article 32 investigation was conducted regarding the above charges. A report was filed on 28 February 2000 by LCDR [REDACTED] with a recommendation that the charges be dismissed, that receive medical treatment for a mental disorder, and that [REDACTED] be administratively or medically separated from the United States Navy.

F. On 9 March 2000 the Staff Judge Advocate recommended trial by general court-martial, which was subsequently approved by the convening authority. The third charge of violation of Article 90 (disobeying an order) was dismissed as multiplicitous with the charge of missing movement.

G. On 21 March 2001 [REDACTED] requested of the Secretary of the Navy a separation in lieu of trial by court-martial. He was subsequently discharged from the Navy on 28 July 2000 with a General Discharge (Under Honorable Conditions) in lieu of trial by court martial.

II. COMMENTS AND DISCUSSION:

A. Based on review of the medical record, suffering from Major Depressive Disorder, Single Episode, Moderate Severity during his inpatient hospitalization. It is well documented throughout his inpatient hospitalization that he was suffering from the neurovegetative symptoms and suicidal ideation that

compose the criteria for the disorder as given in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). Furthermore, testimony given by Naval Officers during the Article 32 investigation, support that just prior to his admission to the locked psychiatric ward at [REDACTED], he appeared to be suffering from a mood disorder and all were sufficiently enough concerned about his mental state and physical condition to try to get him to a safe environment.

B. Between the periods of 06 NOV 1999 and mid-DEC 1999, it is not clear that had Major Depressive Disorder. There are no medical records or other documentation prior to his unauthorized absence indicating that he had Major Depression. However, even if we assume he was suffering a depressive disorder, he would still have appreciated the nature and quality of an Unauthorized Absence. He was organized well enough to navigate across the country and to obtain goods and services to sustain himself and his vehicle for that period of time. Such an individual, if asked "Is it against the law not to report for duty?" could reasonably be expected to answer in the affirmative. Further, he did not seek psychiatric or other mental health attention for a depression during this time period. The act of missing ship's movement is not uncommon.

C. During his hospitalization, [REDACTED] is felt to have possessed the capacity to appreciate the nature and quality, or wrongfulness of his conduct. He was not observed to have any cognitive dysfunction during his hospitalization, nor is there any history of an injury or insult that may have affected his cognition. The offenses he committed were not caused by his depression.

Major Depressive Disorder did not render him unable to understand the nature of the proceedings against him or to conduct or cooperate intelligently in his defense. Again, no cognitive deficits are documented and although he may have had difficulty concentrating (a criterion of Major Depression), there is no indication it was of significant enough severity as to impair his ability to cooperate with counsel. s opinion that no sanity board was required was justified, based on the serial mental status examinations conducted by him and other hospital staff.

The four standards for determining incompetency in decision making as described in Kaplan and Sadock's Comprehensive Textbook of Psychiatry, Seventh Edition are:

first, communication of choice; second, understanding the information provided; third, appreciation of one's situation and the risks and benefits of options available; and fourth, rational decision-making. was able to make rational decisions regarding his legal proceedings, as there was no evidence that his thought processes were impaired upon discharge from the hospital, and are documented to have been linear, logical and goal directed. Nor did his testimony at his Article 32 investigation indicate any thought process disorder.

[REDACTED] suffered from a dysthymic disorder prior to his commissioning in 1999. Based on history and collateral information, his physicians at [REDACTED] diagnosed him with Dysthymic Disorder, described in Kaplan and Sadock's Comprehensive Textbook of Psychiatry as a long-standing, fluctuating, low-grade depression. He reported a history of previous suicide attempts and suicidal ideation. Testimony from his mother supports this diagnosis. His depression was subsequently aggravated by his Naval Service after 26 May 1999, which, according to

the medical record, was a result of his failure to achieve certain career goals in the Navy.
IV. OPINIONS AND RECOMMENDATIONS:

The following opinions and recommendations are made:

- At the time of commission of the described offenses, the subject did not have a severe mental disease or defect.
- The subject was able to appreciate the nature and quality, or wrongfulness of his conduct.
- The subject did not suffer from a mental disease or defect rendering him unable to understand the nature of the proceedings against him or to conduct or cooperate intelligently in his defense.
- The subject suffered from dysthymic disorder prior to his commissioning in 1999. The disorder was aggravated by his naval service after 26 May 1999.

■ ■■■■■ MC, USNR, PSYCHIATRY RESIDENT

LCDR

