



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. 8772-20
Ref: Signature Date

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Dear █,

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 20 January 2022. 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. In addition, the Board considered the advisory opinions contained in Psychiatric Advisor CORB letter 1910 CORB: 002 of 18 November 2021 and Director CORB letter 1910 CORB: 001 of 18 November 2021; copies of which were previously provided to you for comment.

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 entered active duty with the Marine Corps in July 2009. You deployed to █ in September 2010 and January 2012 in support of combat operations. During these deployments, you assert you suffered trauma as a result of your exposure to death of other service members. Upon your return from your second deployment to █, you commenced to steal and sell government computer equipment for your own benefit. In the meantime, you continue to perform your duties well enough to earn a Navy and Marine Corps Achievement Medal and Meritorious Mast in 2013 and 2014, respectively. However, in September 2014 you underwent a polygraph test as part of your security clearance

and admitted to your misconduct related to selling of government equipment. You also made several questionable statement to the investigator that resulted in a command directed psychiatric evaluation and a Anxiety Disorder diagnosis. During your course of treatment, your diagnosis was later changed to Bipolar Disorder and Post-Traumatic Stress Disorder (PTSD) resulting in a referral to the Physical Evaluation Board. On 14 July 2015, non-judicial punishment was imposed on you for larceny and selling of government property. You were notified of administrative separation processing with the possibility of an Other than Honorable characterization of service. Commander, U.S. Marine Corps [REDACTED] Command directed your PEB proceedings be terminated based on your misconduct processing and you were discharged on 16 November 2015 for misconduct with a General characterization of service. Post-discharge, the Department of Veterans Affairs (VA) rated you for PTSD and Bipolar Disorder at 100%.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list or, in the alternative, an upgrade to you characterization of service and a change to your narrative reason for separation. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions in your case.

The Board concluded the preponderance of the evidence supports your administrative separation for misconduct. In making this finding, the Board relied on your non-judicial punishment from 14 July 2015 and your admission that you stole and sold government computer equipment for your own benefit. The Board found insufficient evidence to conclude that you were not mentally responsible for your actions despite evidence you were being treated for a mental health condition. As pointed out in the advisory opinion, there was insufficient medical evidence to conclude your symptoms had any substantive effect on your behavior at the time you were committing the misconduct. Despite your treatment for depression, your performance at the time documents you were an above average performer with no occupational issues. It was only after your misconduct that it appears your Bipolar Disorder and PTSD symptoms began to negatively affect your activities. Therefore, the Board concluded the preponderance of the evidence supports a finding that you were mentally responsible for your misconduct that formed the basis for your administrative separation for commission of a serious offense. Since your misconduct qualified for an Other than Honorable characterization of service, disability regulations directed the misconduct processing to supersede any disability processing. Accordingly, the Board found that Commander, U.S. Marine Corps [REDACTED] Command's decision to terminate your PEB proceedings was in accordance with applicable regulations at the time and appropriate. Based on these factors, the Board concluded your request to be placed on the disability retirement list is not supported by the preponderance of the evidence.

Regarding your request to have your narrative reason for separation changed to Secretarial Authority along with an upgrade to your characterization of service, the Board also determined these changes were not supported by the preponderance of the evidence. Despite applying liberal consideration to your case, the Board concluded your General characterization of service remains appropriate. The Board made this decision after concluding you, more likely than not, already received the benefit of mitigation for your mental health condition when you received a General vice Other than Honorable characterization of service. Based on the seriousness of your

misconduct, in the Board's opinion, you clearly merited an Other than Honorable characterization of service. However, you were assigned a more favorable General characterization of service after submitting a letter to the Commanding General and having your mental health condition considered. Therefore, the Board felt no injustice exists to merit additional mitigation based on your mental health condition or circumstances of your case. Based on similar reasons, the Board found no reason to change your narrative reason for separation. In making these findings, the Board took into consideration that the Marine Corps decisions in your case allowed you to seek and receive VA treatment for your disability conditions as well as Compensation and Pension benefits. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

1/22/2022

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

Signed by: 