



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: 3346-21
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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 8 September 2021. 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 11 July 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 27 March 1980. On 18 April 1980, you were notified by an investigator for Recruit Training Command that you were suspected of perpetrating a fraudulent enlistment; you were warned and advised of your rights. On 14 May 1980, your commanding officer (CO) notified Chief of Naval Personnel (CNP) that despite your fraudulent enlistment, continued processing for administrative separation was not in the best interest of the Navy, and no further action would be contemplated. On 4 June 1980, CNP reviewed your case and concurred with the CO that no further action with regard to administrative separation will be contemplated. Additionally, CNP directed that you be issued an administrative remarks (Page 13) counseling warning. On 19 August 1980, you were issued a Page 13

counseling warning informing you that further misconduct may result not only in disciplinary action, but also in processing for administrative separation from the Navy. On 30 October 1980, you received non-judicial punishment (NJP) for an unauthorized absence, absent from your appointed place of duty, and wrongful possession of marijuana.

On 19 December 1980, you were notified that you were being recommended for administrative discharge from the Navy. You were advised of, and waived, your procedural rights, including your right to consult with and be represented by military counsel. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending administrative discharge from the Navy with a general (under honorable conditions) characterization of service.

Unfortunately, the separation authority's decision documents are not in your official military personnel file (OMPF). However, the Board relies on a presumption of regularity to support the official actions of public officials, and in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy on 31 December 1980 with a general (under honorable conditions) characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 11 July 2021. The AO noted in-service records did not contain evidence of a diagnosis of a mental health condition. The AO concluded by opining the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your request for liberal consideration because your discharge was related to your undiagnosed bipolarism. Additionally, you contend that some of your behavior while you were in the Navy was connected to a previously undiagnosed and undocumented bipolarism, and you were unaware of your mental condition prior to your military service although bipolarism is genetic.

After careful consideration of the AO, your submission of supporting documentation, and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contentions as previously discussed, your submission of supporting documentation, and your desire to upgrade your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by an NJP, which included the wrongful possession of a control substance, outweighed these mitigating factors. Additionally,

the Board noted on 19 August 1980, you were warned that further misconduct could result in your administrative separation from the Navy. 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.

Sincerely,

9/8/2021

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Executive Director

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