



**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. 6300-21  
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 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 28 November 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. The Board also reviewed the 11 October 2022 advisory opinion (AO) of a qualified medical professional, as well as your 10 November 2022 response in rebuttal to the AO.

The Board determined that a 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 enlisted in the Marine Corps and commenced active duty on 24 March 2008. On 7 January 2009, you received nonjudicial punishment (NJP) for insubordinate conduct. On 15 January 2009, you were diagnosed with a personality disorder, not otherwise specified with immature personality traits. The same day, you were provided counseling concerning your diagnosis of a personality disorder, and you were advised on seeking medical assistance concerning your diagnosis. On 26 March 2009, you were notified of the initiation of administrative separation proceedings, and your rights in connection therewith, on the basis of the convenience of the government (personality disorder). On 3 April 2009, your

commanding officer recommended that you be separated based on your diagnosed personality disorder. In his recommendation for discharge, your commanding officer explained that he personally interviewed you with respect to your discharge and its basis. On 6 May 2009, you were discharged with a General (Under Honorable Conditions) characterization of service.

In 2016, this Board denied your request to have your discharge upgraded and to have your narrative reason for separation changed. You contended that you should have been discharged due to hypothyroidism. In its letter, the Board explained that the materials you provided were insufficient to support your request, and that the misconduct evident in your service record supported your discharge characterization. You have explained that, following this denial of your petition, you sought relief from the Physical Disability Board of Review, and that your request was denied.

In 2020, you filed a petition seeking reconsideration of your 2016 petition and requested that you be medically retired as of the date of your discharge, or alternatively, that your discharge be changed to a medical separation. You also requested that your Certificate of Release or Discharge from Active Duty (DD Form 214) be changed to reflect an Honorable discharge with appropriate changes to your separation code and reentry code. In connection with reviewing your 2020 petition, this Board obtained an AO from the Secretary of the Navy Council of Review Boards (CORB), which was dated 29 July 2020. That AO was considered unfavorable to your request, as follows:

In summary, the evidence does not support the applicant's request for placement on the disability retirement list based on hyperthyroidism, which he asserts was erroneously misdiagnosed with a personality disorder. While the existence of hypothyroidism is not disputed here, it was identified and treated by endocrinologists, and for which he was found fit.

While the applicant initially presented with a variety of physical and psychological symptoms, his mood was euthymic within a few months of treatment with thyroid hormone replacement. The treating Division Psychiatrist, a competent medical authority, duly considered the contribution of hypothyroidism to the applicant's presentation, and maintained that the applicant met criteria for Personality Disorder Not Otherwise Specified with Immature Traits that was 'of such severity that this individual's ability to function effectively in the military is significantly impaired.'

The prior AO also addressed the Department of Veterans Affairs (VA) findings that you raised, "[w]hile the VA subsequently found the applicant's hypothyroidism service connected despite pre-service radioiodine treatment, this only established that the condition was considered to have been incurred during the applicant's career." The prior AO also explained that, "[s]ervice connection does not establish unfitness for Naval service or a specific disability rating by the Department of the Navy PEB, which requires demonstrated duty performance impairment of sufficient magnitude as to render a Service applicant Unfit for Continued Naval Service for the condition."

The Board denied your request for a disability retirement by letter dated 11 January 2021, as follows:

The Board weighed Petitioner's contentions regarding his entitlement to medical separation or retirement and took into consideration the conclusions of Petitioner's Advisory Opinion and Petitioner's rebuttal. The Board noted that in-service records indicate that Petitioner was being treated for hypothyroidism and depression, but found that the existence of these conditions does not appear to have rendered him unfit for performance of his duties as outlined in SECNAVINST 1850.4.

Even taking into account Petitioner's argument that the VA rating post-discharge establishes the severity of his hypothyroidism and that the hypothyroidism, its secondary conditions and depression impacted his fitness for duty, the Board concurred with the analysis of the Advisory Opinion and determined that Petitioner did not have a qualifying condition that rendered him unable to reasonably fulfill his duties. Accordingly, the Board found that he was not entitled to processing for a medical separation or retirement under SECNAVINST 1850.4, and that his administrative separation on the basis of the convenience of the government (personality disorder) was appropriate.

The Board also considered your request for an upgrade of your discharge in view of the clemency factors that you presented, and the Board found no error in your discharge characterization. The Board found, however, that as a matter of justice, your discharge documents should be changed to remove the reference to a Personality Disorder and that any associated reference to your diagnosed condition should be changed on your DD Form 214.

In your current petition, you request to be placed on the disability retirement list for hypothyroidism, upgrade your characterization of service to Honorable, and corresponding changes be made to your narrative reason for separation, authority for separation, and separation/reentry codes. You also request that any mention of your nonjudicial punishment be removed.

In order to assist it in reviewing your current petition, the Board obtained a new AO, dated 11 October 2022, from a different medical professional and office than used in the 2020 adjudication of your previous application. According to the new AO:

Petitioner provided new evidence in support of his argument that he was misdiagnosed with a personality disorder and should have been referred to the Disability Evaluation System for his thyroid condition. In his application and legal brief, Petitioner contended he was improperly diagnosed with a personality disorder, which precluded referral to a medical board for his conditions of hypothyroidism and depression.

Petitioner contended new and material evidence in the form of a letter from his current psychiatrist attesting that he has not manifested any evidence of a

personality disorder in four years of treatment, which should be given significant weight as a rebuttal to Division Psychiatrist's diagnosis of personality disorder.

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Petitioner's diagnosis of Hypothyroidism manifested during his military service and was appropriately evaluated and treated. The medical record indicated that Petitioner's Hypothyroidism was improving at the time of discharge. He was placed on periods of light duty during his evaluation and adjustment of his thyroid replacement medications, but never placed in a Limited Duty Board status. At no time during his treatment, was he assessed as unfit for service or appropriate for referral to the Physical Evaluation Board for determination of fitness for continued service.

At the time of his Separation Physical, the examining physician noted his treatment for depression and hypothyroidism (assessed as "stable" on his medication regimen for his hypothyroidism) and found the Petitioner physically qualified for service and separation. Though the VA granted Petitioner service-connection and awarded disability benefits for his Hypothyroidism, this was a manifestation-based determination that the condition arose during active service but was unrelated to a finding of unfitness for service. Petitioner was not considered for referral to a medical board as he did not clinically manifest impairment of sufficient magnitude as to render him 'unable, due to disease or injury, to perform the duties of his office, grade, rank or rating in such a manner as to reasonably fulfill the purpose of his employment on active duty.'

The AO turned to your diagnosis of a personality disorder while you were on active duty, as follows:

Petitioner provided a clinical opinion from his current treating psychiatrist, who has treated him for over four years and opined, 'During my time treating [Petitioner], I have seen no evidence of a personality disorder.' The clinical opinion of a physician with a multi-year history of treatment with a patient deserves substantial consideration given the perspective long-standing observations and evaluations provide. Unfortunately, the lack of clinical context of this statement without an accompanying clinical history or summary explanation of the clinical evidence leading to such a statement makes it difficult to weigh an opinion temporally removed from the Petitioner's time of service in comparison with a clinical opinion originating at the time of Petitioner's service. Given the information available, I would assign greater weight to the clinical opinion of the in-service psychiatric evaluation at the time of Petitioner's military service as more representative of the Petitioner's psychological condition in the context of the demanding environment of military service.

The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was

unfit for continued military service due to his Hypothyroidism or Depression and should have been medically retired, nor his contention that his Personality Disorder diagnosis was erroneous.”

You were provided a copy of the new AO, and you provided a rebuttal dated 10 November 2022. In your rebuttal, you made four points. First, you contend that you met the requirement of duty performance impairment and that the AO improperly continued to rely upon the original diagnosis of a personality disorder despite the evidence that directly contradicts this diagnosis. You argue further that, your hypothyroidism is clearly established in your records, and side effects of both this condition as well as the medication used to manage it are known to cause behavioral side effects.

Second, in your rebuttal, you contend that the hypothyroidism was not satisfactorily controlled at the time of your discharge, but that does not mean that it was not “unfitting” or that it was not the cause of the behavioral issues that triggered your separation. Instead, that shows that when you were being evaluated for continued service, they would have either returned you to duty or placed you on the temporary disability retired list (TDRL) to ensure the proper rating was reached after stabilization occurred.

Third, you contend that a psychiatrist who has treated you for more than four years has indicated that during the entirety of their doctor-patient relationship, he had never seen evidence which would support a diagnosis of personality disorder. You further argue that the psychiatrist would have no reason to elaborate more than this given that a personality disorder does not go away. Thus, according to your rebuttal, if you were suffering from a personality disorder, you would have would have displayed symptoms of it during your sessions, and that the lack of any evidence over the course of four years is more than sufficient to call into question the diagnosis that was reached hastily by a military provider.

Finally, you contend in rebuttal that, as indicated in the earlier petition, a military psychiatrist diagnosed you with a personality disorder largely based upon a mistaken belief that you experienced behavioral issues throughout your adolescence - a belief reached due to another patient’s records being placed in your medical file. When you remove the adolescent history from the equation, there is no evidence of a personality disorder aside from the incident in the field, which is more appropriately viewed as an adverse reaction to your medication. One incident, standing by itself, does not support a diagnosis of a personality disorder. When considering the military physician’s findings against the civilian physician - who treated you for over four years - it is apparent that the military physician made a mistake in labeling personality disorder.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including your written materials containing new arguments, the new matter that you provided, the new AO, and your response in rebuttal to the new AO, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member

may be found unfit if their disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge. In reaching its decision, the Board concurred with the conclusion of the new AO. The new AO, like the prior AO, found insufficient support for your contention that at the time of your discharge you were unfit for continued service due to Hypothyroidism or Depression. Rather, both AOs provided detailed explanations that your Hypothyroidism was well documented in service, and that it did not present an unfitting condition. Notably, there is no indication in your service or medical records that any medical provider suggested that you be referred to the Physical Evaluation Board. In addition, the Board observed that there is no evidence in your service or medical records that your command provided any non-medical assessments recommending that you be evaluated for fitness for service. In other words, there is no indication that you were unable to perform your duties as a result of Hyperthyroidism or Depression. To the contrary, your record demonstrated that you were diagnosed with a personality disorder, and that was the basis for your discharge. And, as you recognized in your petition, a personality disorder diagnosis is not subject to disability compensation.

The Board considered your response to the AO, but determined that the four errors that you identified amounted to your disagreement with the findings of the AO, but did not provide evidence that the AO was deficient. Further, the Board disagreed with your assertion that there existed contemporaneous evidence that contradicted your diagnosis of a personality disorder, or that your hypothyroidism was not satisfactorily controlled at the time of your discharge. The new AO addressed this, explaining, in part, that the “[t]he medical record indicated that Petitioner’s Hypothyroidism was improving at the time of discharge. He was placed on periods of light duty during his evaluation and adjustment of his thyroid replacement medications, but never placed in a Limited Duty Board status.” Further, the Board observed that you underwent a pre-separation physical, and you were found fit for separation.

In its review of the new matter that you provided, in particular the statement of your civilian treating psychiatrist, which you also raised as your third point in your rebuttal to the new AO, the Board concurred with the findings of the new AO, who assigned “greater weight to the clinical opinion of the in-service psychiatric evaluation at the time of Petitioner’s military service as more representative of the Petitioner’s psychological condition in the context of the demanding environment of military service.” With respect to your contention in rebuttal asserting that the military psychiatrist diagnosed you with a personality disorder largely based upon a mistaken belief that you experienced behavioral issues throughout your adolescence, the Board found insufficient evidence that your in-service diagnosis of personality disorder was incorrect. Here, the Board also concurred with the new AO, which addressed your in-service diagnosis. Ultimately, the Board fairly considered your new matter, and, on balance, concurred with the findings of the new AO. In particular, the Board afforded greater weight to the in-service

psychiatric evaluation during your active duty service, as well as the prior and new AOs review of the medical evidence.

Further, with respect to your request for the removal of evidence of your nonjudicial punishment, the Board found insufficient evidence to support a basis that the nonjudicial punishment should be removed. The available records indicate that the imposition of such punishment was performed with appropriate regularity and included the safeguards relating to the imposition of such punishment.

Finally, regarding your request for a discharge upgrade, the Board again determined insufficient evidence exists to upgrade your 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 Kurta, Hagel, and Wilkie Memos. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that significant negative aspects of your active duty service outweighed the positive aspects. Therefore, after weighing the totality of the evidence, the Board concluded that a General (Under Honorable Conditions) characterization remains appropriate in your case. 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 upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, in light of all of the foregoing, the Board determined there was no error or injustice in your naval record and it denied your request for reconsideration.

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, \_\_\_\_\_

12/19/2022

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Executive Director

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