

an order. On 23 May 1989, you were diagnosed with a personality disorder after expressing suicidal ideation. The medical professional that evaluated you found that there was no evidence of psychosis or organic mental disorder. On 3 May 1990, you received nonjudicial punishment for disobeying an order, disrespect, and provoking words.

On 7 January 1991, you submitted a hardship reassignment request based on your wife's anxiety and depression. On 30 January 1991, your hardship request was disapproved. On 16 February 1991, you reported to the emergency room at Naval Hospital [REDACTED] reporting suicidal ideations. The providers stated that your story was inconsistent and that you showed no signs of depression or suicidal ideation and there was no need for hospitalization. On 16 February 1991, you received a mental health evaluation prior to being placed in confinement due to a period of unauthorized absence. You were diagnosed with possible post-traumatic stress disorder (PTSD), but determined fit for confinement. On 27 February 1991, you received nonjudicial punishment for two periods of unauthorized absence, making a false official statement on two occasions, and assault. Thereafter, you were notified of the initiation of administrative separation processing due to commission of a serious offense, and your rights in connection therewith and you waived your right to an administrative board. In connection with your separation, you underwent a pre-separation physical to determine your fitness for separation. Your physical noted you suffered from Borderline Personality Disorder and recommended your prompt administrative separation, stating that you were not currently suicidal and there was no evidence of psychosis. You then commenced another period of unauthorized absence while checking yourself into a medical facility. Due to you being in an unauthorized absence status, your command requested permission to discharge you in your absence, which was granted on 14 March 1991, and you were so discharged.

After your discharge, you filed an application for an upgrade of your discharge characterization with the Naval Discharge Review Board (NDRB). On 5 May 1992, the NDRB denied your application. You also filed several requests for benefits with the U.S. Department of Veterans' Affairs (VA), which included your submission of medical records and opinions. A more fulsome description of your efforts to obtain VA benefits is discussed in the AO.

In 2021, you filed a petition with this Board seeking the award of a service disability retirement. On 16 June 2021, this Board denied your petition, reasoning as follows:

In your case, the Board determined 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. Despite your hospitalization at the time of your discharge, the Board relied on the 6 March 1991 separation physical that found no disability conditions to merit further treatment or to prevent your separation from active duty. The examining medical provider specifically noted there was no evidence of psychosis and that you were not 'grossly depressed.' This was consistent with your prior medical treatment records associated with your suicidal ideation hospitalizations that concluded there was no evidence you suffered from any serious mental health conditions.

The Board noted that the Manual of the Medical Department Chapter 15-20 requires separation examinations and evaluations for active duty members and states 'comprehensive evaluations are conducted for the purposes of ensuring that Service members have not developed any medical conditions while in receipt of base pay that might constitute a disability that should be processed by the Physical Evaluation Board (PEB) and to ensure Servicemembers are physically qualified for recall to additional periods of active duty. Thus, the standards for being physically qualified to separate are the same as those being qualified to continue active duty Service ...' Since you were found physically qualified for separation at the time of your discharge, the Board relied on this medical evidence in determining that you were, more likely than not, fit for active duty at that time. Finally, regardless of the existence of any disability conditions at the time of your discharge, the Board determined you were ineligible for disability processing based on your misconduct processing that resulted in an Other than Honorable characterization of service. Department of Navy disability regulations directed misconduct processing to supersede disability processing. Based on these factors, the Board concluded your narrative reason for separation remains appropriate.

In your petition, you request that you be placed on the disability retirement list and have your characterization of service upgraded based on your mental health condition at the time of your discharge for misconduct. In support of your request, you assert that you were unfit for continued naval service due to Traumatic Brain Injury, Anxiety, and Depression at the time you were discharged for misconduct. You provided new matter for the Board to reconsider your prior petition, in the form of new and updated medical documentation. A qualified medical professional reviewed and considered this medical documentation and commented upon it in the 31 October 2022 AO, a copy of which, as noted, you had been provided.

The 31 October 2022 AO was considered unfavorable to your request. The AO reviewed all materials associated with your petition, including your service and medical records, as well as your prior petition, and all of the material that you provided in support of your petition. The Board substantially concurred with the analysis and findings of the AO, and it therefore sets forth below portions of the AO, with change in formatting, as follows:

Petitioner's in-service records revealed multiple outpatient and inpatient psychiatric evaluations with diagnosed conditions of Occupational Problem, Personality Disorder, and on one occasion PTSD (from civilian bus accident in December 1990), for which Petitioner received mental health treatment during his military service.

There were no diagnoses of Traumatic Brain Injury or documentation of residual symptoms of TBI in the in-service clinical record. Psychological stressors were consistently documented as occupational, family, and personal in nature with Petitioner's focus of complaints on interpersonal conflicts with his chain of command.

Though the bus accident was mentioned (in the context of a traumatic incident associated with his diagnosis of PTSD) in the in-service clinical record on 2/19/1991, a TBI diagnosis, based on the history provided by the Petitioner and citing residual symptoms of TBI, was not entered into the clinical record until a 4/1/2021 VA Clinic note.

Petitioner's contention of anxiety and depressive symptoms causing occupational impairment to the level of rendering him unable to reasonably perform the duties of his or her office, grade, rank, or rating/MOS on active duty was not supported by the available evidence.

Throughout Petitioner's multiple psychiatric, medical, and fitness for confinement evaluations, to include inpatient psychiatric hospitalizations, there were no medical assessments that he was unfit for duty or suffered from a mental health condition that multiple examining medical and mental health providers assessed as qualifying for consideration for a Medical Board or referral to the Physical Evaluation Board for a fitness for duty determination.

In his two extensive 2020 psychological medical opinions prepared for counsel representing Petitioner in his appeals of VA determination of character of service barring him from VA disability benefits, Dr. [] did not document or refer to any in-service or post-discharge TBI diagnoses, or contend that Petitioner had incurred a disability from a TBI condition, or that TBI contributed to his opinion of Petitioner's "insanity" for VA purposes.

Review of the available objective clinical and non-clinical evidence documented Petitioner adequately executed the full range of responsibilities of his rate and rank as reflected by his Performance Evaluations. Evaluations from 17JUN88-14MAR91 revealed Individual Trait Averages predominantly ranged from 3.00-3.60 (including in the evaluations following his two initial NJP's) except for his 90FEB01-91FEB15 evaluation, following his third NJP, and reflected his ability to adequately perform the range of duties commensurate with his rate and rank.

Though Petitioner's in-service clinical history documented depressive and anxiety symptoms, these symptoms were considered existent in the context of a diagnosed personality disorder (by multiple in-service mental health providers, as well as post-discharge civilian providers) and ongoing occupational and personal stressors. There was no in-service evidence Petitioner manifested signs or symptoms indicative of a TBI, nor ongoing residual symptoms of TBI, during his military service, or for an extended time post-discharge. In Petitioner's in-service medical records, there was no indication that his clinical condition interfered with his ability to reasonably perform the duties of his office, grade, rank, or rating/MOS, nor that his mental health status was appropriate for consideration of placement on a period of ongoing Limited Duty, initiation of a medical board, or referral to the Physical Evaluation Board for a fitness determination.

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 TBI, anxiety, and depression and should have been medically retired.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, 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 or 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 the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. At the outset, the Board determined that the new matter that you provided in your current petition was insufficient to change the findings that it made in 2021. In addition, the Board nevertheless provided a comprehensive review of the entirety of your request and it disagreed with your rationale for relief. The Board concurred with the findings of the AO, finding that it sufficiently considered the relevant factors and reached a reasonable conclusion. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. While you were diagnosed with mental health conditions, as described by the AO, there is no evidence that any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the disability evaluation system. In fact, the Board observed that you had undergone a pre-separation physical, which did not find that unfit for separation due to any medical conditions. Finally, the Board also concurred with its prior determination that you were discharged based on your record of misconduct, and, as it has previously explained to you, Department of Navy disability regulations directed misconduct processing to supersede disability processing.

The Board noted that you had, or currently have pending, active cases with the VA. Without commenting on any outcome of such, as the VA is an entirely separate organization, to the extent you receive an award of disability benefits from the VA in the future, please note that the VA does not make determination as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.

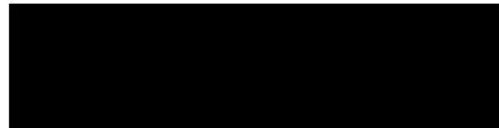
In your petition, you also requested an upgrade of your Other Than Honorable characterization of service, asserting that your mental health conditions should mitigate the misconduct that you engaged in while on active duty. In reviewing this portion of your request, the Board applied the Clarifying Guidance to your petition in light of your mental health conditions. Despite its application of Clarifying Guidance and providing liberal consideration to the assertions in your

current petition, the Board did not believe a discharge upgrade was appropriate. The Board reasoned that, as set forth in the AO, your mental health was appropriately assessed while you were on active duty. The Board further observed that you engaged in repeated misconduct, including committing a serious offense, and that there was insufficient evidence that you suffered from a mental health condition which would serve to mitigate the misconduct for which you were separated. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, based on all of the foregoing, the Board denied the entirety of your petition.

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,

2/15/2023

A large black rectangular redaction box covering the signature area.

Executive Director

Signed by: 