



being directed to a Board of Inquiry (BOI). The BOI issued its report, on 23 August 2019, in which it reported its finding that a preponderance of the evidence substantiated the reason for separation for cause, Substandard Performance of Duty, and that you failed to demonstrate acceptable qualities of leadership required by an officer of your grade. The Board recommended that you be separated from the naval service with a General (Under Honorable Conditions) characterization of service. After the report of the BOI issued, your counsel submitted a letter of deficiency, which was considered by your chain of command.

As paraphrased from the AO, in the time frame after your BOI, you were medically evaluated, and, in an 18 March 2020 Report of Medical Assessment, you indicated your overall health was the same as your last medical assessment/physical examination and that you had not had any illnesses or injuries that caused you to miss duty for longer than three days. You reported that you had been seen/treated for neck, back, fee, and mental health conditions. You stated you did not suffer from any injury or illness on active duty for which you did not seek medical care and you were not taking any medications. You denied having any conditions which limited your ability to work in your primary military specialty, required geographic limitations, or assignment limitations. You reported you had no other questions or concerns about your health and that you planned to seek disability benefits from the U.S. Department of Veterans' Affairs (VA). Your examining physician commented that you had a history of mental health issues, for which you had been seen by mental health multiple times. He stated that you were cleared to separate by the Operation Stress Control and Readiness Team on 2 April 2020, and that you had no other medical issues. You were ultimately cleared to separate without further evaluations.

On 19 May 2020, the Deputy Commandant of the Marine Corps for Military and Reserve Affairs (DC (M&RA)), reported that, after review of the applicable law and regulations, the report of the BOI, the Report of Misconduct and Substandard Performance, the matters you and your counsel provided, as well your chain of command's recommendations, it was recommended that you be separated with an Honorable characterization of service. According to DC (M&RA), your substandard performance demonstrated that you had no potential for future service and it significantly outweighed the positive aspects of your career. DC (M&RA) further stated that, because substandard performance was the sole basis for separation, it was required that you receive an honorable characterization of service, with a corresponding separation code of GHK1 (Substandard Performance). On 28 May 2020, the Assistant Secretary of the Navy for Military and Reserve Affairs approved the recommendation by DC (M&RA), and you were so discharged on 3 July 2020.

In 2020, you filed a petition with this Board seeking to have various documents removed from your service record. You also requested the award of a 15-year retirement. In reviewing your petition obtained an AO from Headquarter Marine Corps, which was unfavorable to your request. The Board denied your petition by letter dated 21 June 2021.

In your current petition, you request that you be awarded a service medical retirement, or that you be placed into the Integrated Disability Evaluation System. Alternatively, you request that the Board apply liberal consideration. In support of your request, you contend that you suffered from post-traumatic stress disorder (PTSD), Bipolar disorder, and traumatic brain injury (TBI) at the time of your separation. You assert that these mental health conditions were contributing

factors leading to your involuntary separation for substandard performance. Further, you state that the investigation that was conducted into your performance as both the operations officer and the executive office included statements by witnesses that described symptoms of mental health problems. You state that you were subsequently diagnosed for PTSD, Bipolar Disorder, and TBI by the Department of Veteran's Affairs. Thus, according to your petition, you should have received a proper screening for mental health and referred to a medical evaluation board.

In order to assist it in reviewing your petition, the Board obtained the 21 December 2022 AO. According to the AO, with edited formatting:

During his military career, Petitioner was diagnosed on at least two occasions with Adjustment Disorder with depression or anxiety, primarily in the context of his divorce, deployment/redeployment stress, and his investigation/BOI and subsequent separation from service for substandard performance. During his military service, he was treated appropriately with psychotropic medications and psychotherapy with good results. His symptoms did not rise to the level of an unfitting psychiatric diagnosis, or render him unfit to fulfill the responsibilities of his rank and office.

He remained at a full duty status without placement on a limited duty board or consideration for referral to the Physical Evaluation Board. Psychiatric evaluations found him fit for duty, with the last psychiatric encounter finding him stable psychiatrically and fit for separation from service contemporary to his separation physical processing. At his separation physical, Petitioner indicated he was in good health and denied having any conditions which limited his ability to work in his Primary Military Specialty, required geographic limitations, or assignment limitations. He did endorse anxiety and depressive symptoms and answered checklists endorsing numerous TBI and PTSD symptoms.

The examining physician performing his separation physical addressed his physical and mental health conditions and found him physically qualified for separation, referencing recent mental health evaluations regarding his endorsed conditions and findings he was psychiatrically cleared for separation.

Review of the available objective clinical and non-clinical evidence documented Petitioner was able to function in his appointed positions and fulfill the range of responsibilities of his specialty and rank up through his separation processing. His fitness reports, even during his periods of psychiatric distress, were competitive and reflected his ability to adequately perform the range of duties commensurate with his specialty and rank. There is no indication that during the investigations or administrative procedures/processing, that his counsel or chain of command attributed his personal or professional behaviors to a mental health condition, nor did they feel his behaviors/conduct warranted additional referral for mental health evaluation.

There is a reference to a psychiatric determination on 4/15/2020 at NMC [REDACTED] finding he did not have PTSD or TBI, but that evaluation is not available in the electronic medical record or provided documents to review for context and origin of the referral for the evaluation. Petitioner's statements to his chain of command, investigators, and Board did not attribute his behaviors to a mental health condition.

Post-discharge, Petitioner was evaluated by the Veterans Administration for disabilities incurred during service. Over several different evaluations, he was diagnosed with PTSD, mild TBI, and Bipolar Disorder Type II and granted service-connection and disability benefits. These conditions were based on post-discharge evaluations diagnosing current symptoms and level of disability, and granted service-connection based on symptoms or behaviors that were evidenced in service records or Petitioner's given history as being present in service. The VA does not comment on, or determine, unfitness for duty, which is the criteria for referral to the Disability Evaluation System in-service.

The mental health symptoms Petitioner evidenced in-service were likely prodromal in nature (developing over time into diagnosable mental health conditions), but did not manifest in severity or sufficient range of symptoms to meet diagnostic criteria for PTSD, TBI, or Bipolar Disorder in service, nor severely impair Petitioner's occupational functioning as to render him unfit for duty, or appropriate for referral to the Disability Evaluation System. Had Petitioner been referred to the Physical Evaluation Board at the time of his separation from service, it is very likely he would have been found fit for duty and subsequently separated from 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 and should have been medically retired."

You received a copy of the AO, and you provided a response in rebuttal to the AO, dated 5 January 2023. According to your response, you were screened for both PTSD and TBI prior to discharge, you were screened as positive for both PTSD and TBI, but you were improperly marked clear from PTSD and TBI. Therefore, you asserted that, "[w]hile the Advisory Opinion acknowledges this occurring, the medical advisor offers no insight to this glaring discrepancy." You further argue that, "[e]ven though the Advisory Opinion acknowledges" that you were diagnosed with Bipolar Disorder," the "medical advisor dismisses it as an issue because the medical notes indicate that [you were] was being treated and responding well to the treatment.

Ultimately, [your] conduct/behavior is determined to be substandard and he is discharged. He was discharged while suffering from PTSD, TBI and bi-polar II disorder. [You] were discharged for displaying symptoms of PTSD, TBI and bi-polar II disorder. These symptoms led to [your] conduct being characterized as substandard. Yet, the Advisory Opinion makes no correlation between [his] symptoms and substandard performance.

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 concurred with the findings of the AO, finding that it sufficiently considered the relevant factors and reached a reasonable conclusion. The Board carefully considered your response in rebuttal to the AO, and noted that you addressed matters that were discussed within the AO, but you did not provide any new evidence. On balance, the Board credited the AO, because the Board found that it provided a fulsome description and analysis of your medical conditions, including your mental health, particularly at the relevant times to your petition. By way of further explanation, the Board observed no evidence that you had any unfitting condition while on active duty. While you were diagnosed with mental health conditions while you were on active duty, as described in the AO, your records demonstrate that you were adequately treated for these conditions. In addition, the Board observed that your records reflect that you were able to fulfill the range of responsibilities of your specialty and rank through your separation processing, and that your fitness reports, even during periods of psychiatric distress, were competitive and reflected your ability to adequately perform the range of duties commensurate with your specialty and rank. Finally, the Board further observed that you were medically reviewed and cleared for separation prior to your discharge, and your records did not contain any notifications that you should be referred to a medical evaluation board for further review.

With respect to your assertion concerning findings by the VA, the fact that the VA may have rated you for disability conditions that it determined was service connected to your time in the service did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps because 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, as alternative relief, that the Board apply liberal consideration to your petition, in light of your mental health conditions, and change your narrative reason for separation, separation authority, and separation code. The Board reviewed your request in light of the Clarifying Guidance, and, despite its application of liberal consideration to your request to upgrade these factors, the Board did not agree with your rationale for relief. The Board did not believe changing your record was appropriate. The Board reasoned that you were processed by a BOI due to substandard performance. In reaching its decision, the Board reviewed the documentation relating to your substandard performance and

found that there was no error or injustice in the decision of the BOI, as well as the decisions of the chain of command who reviewed the BOI and ultimately directed your discharge. The Board observed that the actions that led to your BOI very well may have been charged as misconduct and resulted in nonjudicial punishment, and not substandard performance. The BOI actually voted that you be separated with a General (Under Honorable Conditions) characterization of service, with one member of your BOI stating that he believed that you should have been processed for misconduct. Despite the BOI's recommendation, your chain of command directed that you receive an Honorable characterization of service based on the fact that you were processed for substandard performance. They further found that the actions that led to your BOI were not consistent with the professional standards set forth for officers of Marines, and it found no nexus between the mental health conditions that should serve at mitigation, on the one hand, with your actions while on active duty set forth in the report of misconduct and substandard performance and findings of the BOI, on the other hand. The Board thus found no justification for changing your narrative reason for discharge, separation authority, or separation code. 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, given the totality of the circumstances, the Board determined that 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,

2/15/2023

[Redacted signature area]

Signed by: [Redacted name]