



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. 2878-22
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 limitation 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 11 July 2022. 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 the 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 SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 19 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You originally you enlisted in the Navy and began a period of active duty on 12 July 1976. After completing your enlistment obligation, you were discharged honorably on 14 April 1980. You subsequently reenlisted and entered a second period of active duty on 10 October 1980. On 2 February 1983, non-judicial punishment (NJP) was imposed on you for assault with a dangerous weapon, failure to obey an order, disrespect toward a superior petty officer, and communicating a threat. On 22 June 1983, you commenced period of unauthorized absence (UA) which lasted until you were apprehended 573 days later on 14 January 1985. As a result, on 26 March 1985, you were found guilty at a Special Court-Martial (SPCM) of the aforementioned UA and sentenced to be confined for three months, to forfeit \$100.00 pay per month for three months, to be reduced in rank to █, and to be separated from the Naval service with a Bad Conduct

Discharge (BCD). On 22 September 1986, your sentenced was affirmed and, on 20 October 1986, you were discharged.

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 desire to upgrade your discharge and contentions that you were suffering from bipolar disorder during your service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion that you incurred mental health concerns during military service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

During his military service, the Petitioner was appropriately referred for psychological evaluation and properly evaluated over multiple outpatient and inpatient encounters. His diagnosis of personality disorder was based on observed behaviors and performance during his military service, the information he chose to disclose, and the multiple evaluations performed as documented in previous review of his service records. Post-service, the VA has determined service connection for bipolar disorder, from symptoms which began during his period of service. It is possible that the behaviors that were conceptualized as personality traits during his military service have been classified as personality traits during his military service have been classified as symptoms of bipolar disorder post-service. It is possible that some of his misconduct, such as irritability, disobedience, and threats, could be conceptualized as indicators of symptoms of prodromal bipolar disorder. However, it is difficult to consider domestic violence as a symptom of bipolar disorder, particularly given the lack of evidence that he was unaware of his misconduct or not responsible for his behavior across multiple evaluations. It is also difficult to attribute an extended period of UA to bipolar disorder, as an impulsive departure from service would likely have been followed by an impulsive return in a timely fashion, rather than an extended absence. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of a mental health condition that can be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition.”

Based on this 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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that

there is insufficient evidence that your misconduct may be attributed to a mental health condition. The Board noted that you served honorably without incident during your first enlistment despite a medical opinion that you were symptomatic for Bipolar Disorder during that time. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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 the 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,

7/28/2022

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Deputy Director

Signed by █