



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. 7227-22

Ref: Signature Date



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 30 January 2023. 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 service 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)/mental health condition (MHC) (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 and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 24 August 2000. On your enlistment application, you acknowledge pre-service civilian convictions for underage drinking and driving while under the influence of marijuana. On 13 December 2000, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA), and Article 87, for missing ship's movement. On 12 April 2001, you were found guilty at your second NJP for violating UCMJ Article 86, for a period of UA, Article 91, for disrespect toward a Petty Officer, and Article 134, for underage drinking. You did not appeal these NJPs.

On 1 June 2001, you were formally counseled that you were being retained in the naval service following your NJP, but that further deficiencies in your performance or conduct could result in your separation from the service. Service records indicate that you completed a substance abuse treatment program in June 2001 at Naval Medical Center, ██████████

On 14 March 2002, you were found guilty at your third NJP for violating UCMJ Article 86, for a period of UA, Article 92, for failure to obey a lawful order, and Article 134, for disorderly conduct and drunkenness. On 21 May 2002, you were found guilty at your fourth NJP for violating UCMJ Article 86, for a period of unauthorized absence, and Article 92, for failure to obey a lawful order. You did not appeal these NJPs.

On 26 May 2002, you began a period of UA and missed ship's movement from ██████████
██████████ on 28 May 2002.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, 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 24 August 2004 with a Bad Conduct Discharge (BCD), your narrative reason for separation is "Court-Martial," your separation code is "JJD/901," and your reenlistment code is "RE-4."

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) your desire to upgrade your characterization of service and change your narrative reason for separation, (b) your contention that you were suffering from an undiagnosed mental health conditions while in the service, and (c) the impact that your mental health had on your conduct. For purposes of clemency consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your petition you contend that you were suffering from undiagnosed "Bipolar Disorder II Hypo-mania (aka Bipolar Disorder)" while serving on active duty, which contributed to your misconduct. In support of your petition, you provided a letter from a psychiatric nurse practitioner from Achieve Whole Recovery who indicated that they have been treating you for Bipolar Disorder since 2019. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 19 December 2022. The Ph.D. noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed Bipolar Disorder while in service which might have mitigated the circumstances of his discharge. He indicated in his petition that he had been treated for and diagnosed with Bipolar II Disorder on several different occasions. He submitted a letter from a psychiatric nurse practitioner from Achieve Whole Recovery who indicated that he has been treating the Petitioner for Bipolar Disorder since 2019. The Petitioner also submitted 5 character references with his evidence. As mentioned above, his in-service medical records were not submitted for review. There is no evidence that

he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Additional records (e.g., active duty medical records, all 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 Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you submitted a reply that contested the accuracy of the AO and provided additional arguments in support of your application.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, your mental health during service, your post-service diagnoses, and your post-service accomplishments. The Board determined that your misconduct, as evidenced by your four NJPs and court-martial conviction, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved repeated and extended periods of UA and missing ship's movement. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Navy core values and policy, and was detrimental to mission success.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition while in the military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board felt that the evidence of your post-service Bipolar diagnosis is temporally remote to your military service. Although you state that you were originally diagnosed with Bipolar "two years" after your discharge, the evidence only supports a diagnosis as early as 2019, which is over a decade since your discharge. You supplied no treatment or medication records that date back prior to 2019. Further, while the Board understood that you were unaware of your diagnosis at the time of your service, they highlighted that you never raised any concerns, including symptoms of a mental health issue, throughout your lengthy disciplinary process. Although the Board applied liberal consideration per the governing regulation, they concluded that your post-service diagnosis of Bipolar Disorder could not be attributed to your military service. As such, the Board felt that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization of service due to misconduct. Additional medical records referring back to a diagnosis more temporally proximate to your discharge may result in the rendering of an alternate conclusion from the Board.

The Board also highlighted that your record does not contain your court martial records, and therefore it was impossible for the Board to determine if there was an error or injustice that arose from your punitive discharge. Whenever official records are incomplete or unavailable, unless there is substantial credible evidence to rebut the presumption, the Board can presume a

regularity in the conduct of the government affairs. The Petitioner bears the burden of supplying evidence in support of their request for relief.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Therefore, while the Board commends your post-discharge accomplishments and good character, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

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Executive Director

Signed by: █