



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. 4039-23
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 9 November 2023. 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, applicable statutes, regulations, and policies, to include the Kurta 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). In addition, the Board considered the 15 September 2023 Advisory Opinion (AO) from a Licensed Clinical Psychologist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your 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 Navy and entered active duty on 12 February 2009, and in July 2011, you re-enlisted. Records indicate you underwent intensive outpatient treatment for alcohol use disorder in November 2012. In March 2015, a Preliminary Investigation into your alleged offense of unauthorized absence (UA) was conducted, and based on the evidence gathered, the investigating officer recommended disposition at Captain's Mast.

A Disciplinary Review Board convened on 7 March 2015, and also recommended the matter be resolved at Captain's Mast. On 8 March 2015, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for UA, Article 86 of the Uniform Code of Military Justice (UCMJ). You were awarded restriction for 30 days, forfeiture of pay, and reduction in paygrade. On 12 March 2015, you appealed the NJP stating you were experiencing a personal crisis and you felt unable to ask for call out for help. CO, [REDACTED] acknowledged you were facing difficult personal issues but denied your appeal on the basis that it did not absolve you of your military responsibility. Specifically after you stated you had made a conscious choice to avoid reporting to your place of duty and that, you had taken definitive action to prevent the ship from contacting you. Additionally, at NJP, you acknowledged that your Chief and your chain of command would have been supportive of your needs had you voiced them. Your CO thus determined the finding of guilt was just, and the punishment was not disproportionate to the offense of UA.

On 3 December 2015, you received a second NJP for violation of Article 86 for a period of UA. You were awarded a reduction in rate and restriction for 20 days, which was suspended for six months. However, the suspended punishment was vacated by letter dated 18 December 2015, and on 7 January 2016, you received your third NJP for violation of Article 107, UCMJ for making a false official statement.

On 24 June 2016, your CO initiated administrative separation procedures by reason of misconduct – commission of a serious offense, pursuant to the Naval Military Personnel Manual (MILPERSMAN) 1910-142. Commander, [REDACTED] noted that he was aware you were pending a Physical Evaluation Board under the Disability Evaluation System (DES). In accordance with the 1 June 2016, Secretary of the Navy (SECNAV) Memorandum "Disability Evaluation System Dual Processing" the Commander sought an opinion from an appropriately privileged medical health provider as to whether your medical condition contributed to the misconduct underlying your separation. The Commander noted that he "reviewed and considered" the Board Certified Staff Psychiatrist's opinion and "determined separation for misconduct is still appropriated despite [your] medical condition." On 30 September 2016, Commander, [REDACTED] (Acting) granted authority to your CO to discharge you with a General (Under Honorable Conditions) characterization of service by reason of misconduct (commission of a serious offense).

With regard to your mental health concerns, the Board noted, in part, that on 30 July 2015 you attended a psychological consultation with a chief complaint of difficulty concentrating, trouble sleeping, lack of interest in hobbies, and for intermittent periods of depressive symptoms "dating as far back as high school." A formal diagnosis or psychiatric condition was deferred, and it was the evaluator's opinion that you were not psychologically fit for full duty, and you were referred for additional treatment. Subsequently, you were diagnosed with Persistent Depressive Disorder and placed in a Limited Duty (LIMDU) status so that you could be observed and considered for further duty following utilization of a psychotropic agent. Subsequently, your military psychiatrist noted that you experienced a hypomania reaction to medication treatment. Your provider then advised you to discontinue your antidepressant therapy with wean to occur over approximately one week to prevent withdrawal. Later, your military psychiatrist revised the diagnosis to Unspecified Bipolar Disorder, and further noted you continued "to be devoid of symptoms concerning for hypomanic/mania, now being off Effexor for approximately 25

complete weeks.” On 18 November 2015, you were counseled that emergence of symptoms while on antidepressants would likely mean unsuitability for continued service withing your current working rate, and that corresponding psychotropic treatment would be disqualifying.

On 11 February 2016, you received a Joint Department of Defense/Veterans Administration Disability Evaluation Pilot Referral with a diagnosis of “Unspecified Bipolar Disorder.” An Informal Physical Evaluation Board (PEB) convened on 30 June 2016 and you were found to have an unfitting condition of Bipolar Disorder (unstable). On 19 August 2016, the Department of Veterans Affairs (VA) proposed a 70% disability for service-connected Unspecified Bipolar Disorder.

For your petition you contend via counsel that the Navy erred by administratively discharging you with a General characterization of service for misconduct instead of allowing you to medically retire through the DES process. You contend the decision to administratively separate you was erroneous as your command did not follow the 1 June 2016 SECNAV Memorandum regarding dual processing by (1) not having a Flag Officer in your chain of command review and make the determination regarding separation; and (2) not having a medical opinion from a military health care provider as to whether your Bipolar Disorder contributed to misconduct. You further argue it was an injustice to administratively separate you with a General (Under Honorable Conditions) discharge, as there was significant evidence that your misconduct was due to a mental health condition. You requested a medical retirement or in the alternative, an upgrade to your characterization of service to “Honorable,” and the narrative reason for separation to “Secretarial Authority.”

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 and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade or medical retirement and contentions that you deserve a medical retirement because you suffered from conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek. Based on your assertion on your DD Form 149 that you incurred a mental health condition, Bipolar Disorder during your military service, a Licensed Clinical Psychologist reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

In service, his mental health provider considered that his December NJP was related to bipolar disorder symptoms. It is possible that his March 2015 NJP for UA could be attributed to prodromal symptoms associated with his personal stressors at the time. It is possible that falsification of documents could be attributed to symptoms of grandiosity associated with bipolar disorder, although there is insufficient evidence to clearly determine this, as his symptoms of bipolar reduced in December 2015 with a medication change and the NJP was delivered in January 2016. There is insufficient information regarding the timeline of his

false official statement, particularly when the paperwork was filed, to attribute it clearly to bipolar disorder. Additional information regarding his January 2016 NJP could contribute to an alternate opinion.

The AO concluded, “it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to his mental health condition.”

After thorough review, the Board concurred with the AO that there was insufficient evidence to conclude that all of your misconduct was due to your mental health condition, and that your misconduct, as evidenced by your NJPs outweighed these mitigating factors. With regard to your contention your command did not follow the 1 July 2016 SECNAV Memorandum, the Board noted that the 30 September 2016 administrative discharge memorandum was signed by the Commander [REDACTED]. Although the officer at the time was a Captain, O-6, he was holding a General Officer Billet. Secondly, the memorandum the Commander stated that he “reviewed and considered” the opinion of a military health care provider as to whether your medical condition contributed to the misconduct underlying your separation. The Commander ultimately determined separation for misconduct was still appropriate despite your medical condition. Given the totality of the circumstances, the Board determined that although the separation authority was a Captain, O-6, and not a Flag Officer, this is a harmless error in that even if the Commander had been a Flag Officer, the outcome would have remained the same. The Board therefore did not find error in your discharge or assigned characterization of service. In sum, in its review and liberal consideration of all the evidence the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a General (Under Honorable Conditions) characterization of service. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not observe any error or injustice in your naval records. Accordingly, 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,

12/22/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]