



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. 5236-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 October 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 naval record, and applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

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, after serving for two years in the Air Force, you completed an interservice transfer to the Navy on 6 June 2007. You completed your required active duty service on 30 September 2017, and thereafter, you were accepted into the Navy Reserve. Your record provides no indication that you were medically unfit for separation from service in 2017, nor are there any indications you were physically unqualified to affiliate with the Navy Reserve.

On 12 March 2019, the Commanding Officer (CO) of your Navy Operation Support Center (NOSC) prepared a non-medical assessment (NMA) concerning your medical qualifications for serving in the Reserve, specifically, your mental health condition. According to the NMA, “[a]fter interviewing the service member, and reviewing the supporting medical documentation

and Unit CO comments, I believe that [Petitioner] is not physically qualified. There doesn't appear to be a way that he would ever be qualified to be in a flight status, and he stated that if he can't fly, he has no desire to remain in the Navy Reserve."

You submitted a line of duty healthcare (LOD-HC) request, asserting that your mental health condition was incurred while you were on a period of covered Reserve service. On 21 May 2020, the CO of your NOSC prepared a memorandum to Navy Personnel Command (PERS-95) regarding the your LOD-HC request, as follows:

While on active duty in 2017 member lost his ability to consistently fly F-18s due to mask issues caused by acne and affects from IBS. Member began dealing with severe anxiety/depression shortly after. Member joined the Reserves in October 2017. Member checked himself into the Emergency Room on 16 November 2017 and was admitted into a Mental Health Ward. In the following three months, the member was hospitalized numerous times for what was diagnosed as Major Depressive Disorder, Severe, Recurrent w/o Psychotic Features.

Member slowly improved and began drilling with his unit in the summer of 2018, with a possibility to return to flying. Unfortunately, the depression and anxiety returned in September of 2018 and an MRR/PEB was initiated. Member has not drilled since.

Justification for request submitted greater than 180 days after orders ended is due to the member notifying NOSC in April 2020 that he believed his condition was aggravated while on IDT orders in November 2017 and again in September 2018.

The NOSC CO concluded as follows:

COs determination: Not in the line of duty. Member's condition began while on active duty orders. He continued to receive treatment for this condition throughout active duty and as he transitioned into the Reserves. Medical notes from 2017 through 2018 show the stability of the member's condition fluctuates, not specifically coinciding with Reserve orders. Additionally, notes from emergency room visits do not state the root cause of the ER visit to be that his condition was aggravated by Reserve orders, but rather by the member's concerns regarding the end of his Active Duty career and transition to being a civilian.

On 30 July 2020, your request for LOD was denied by Navy Personnel Command (PERS-95), as follows:

The date of incident for major depressive disorder, severe, recurrent without psychotic features was November 2017. The period in which you could have submitted a LOD-HC request ended in May 2018. Your request was initiated April 2020 more than two years after injury date. Furthermore, you were not diagnosed and had no mental health complaints while in the active component. You were not on reserve duty orders and I concur with your CO's LOD

investigation that no reserve duty caused or aggravated the condition beyond the natural progression.”

On 26 August 2020, you appealed the denial of your LOD-HC to the Administrative Law Division of the Office of the Judge Advocate General (Code 13). With respect to the latency of your LOD-HC request, you asserted that you were “never counseled on the possibility of opening an LOD-HC determination until three years after the onset of my aforementioned health issues.” As for the denial of your claim on the merits, you argued that trying to retrain on your aircraft in the Reserve aggravated your symptoms.

On 24 September 2020, the CO of your NOSC provided an endorsement to your appeal for LOD to Code 13, explaining:

Despite completing out-processing, [Petitioner’s] mental health deteriorated further and he returned to treatment with his previous provider. The provider's assessment clearly shows that the exacerbation and return of [Petitioner’s] mental health issues was caused by his return to full reserve duty while drilling July-September 2018. Based on this assessment and [a letter from a CDR], which was not available for assessment by either myself or the board in April, I believe that reserve duty caused the exacerbation and return of [Petitioner’s] mental health issues, making him eligible for Line-of-Duty benefits.

In the meantime, you had applied for service connected disability benefits with the Department of Veterans Affairs (VA). On 22 January 2021, the VA informed you that you had been awarded several service connected disabilities.

On 10 January 2021, a Formal Physical Evaluation Board (FPEB) found you to be Not Physically Qualified (NPQ) for service in the Reserve. On 22 February 2021, Code 13 denied your LOD appeal, finding that there was insufficient evidence to demonstrate that your major depressive disorder was aggravated by any of your duty periods in the reserve. According to Code 13:

a Reserve Component member who incurs or aggravates an injury during a qualified duty status may be eligible for LOD benefits. The administrative record demonstrates that you were in a qualified duty status on October 28-29, 2017, and on various dates from May through August 2018, with your last period in September 2018. However, the record reflects that your condition may have been incurred during your active component service and does not prove by a preponderance of the evidence that your ‘major depressive disorder, severe, recurrent without psychotic features’ was aggravated (worsened over and above its natural progression) during the periods you were in a qualified duty status.

In your petition, you request that this Board grant your LOD-HC request and that you be placed into the Disability Evaluation System. In support of your request, you contend that your conditions, including Major Depressive Disorder started while you were on active duty, began to improve, but thereafter they were aggravated by your service during reserve periods.

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 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. In reaching its decision, the Board substantially concurred with the findings of PERS-95 and Code 13, described above. In particular, the Board determined that you provided insufficient evidence of a nexus between your mental health condition and the periods that you were in a qualified duty status. In sum, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records. 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,

10/30/2023

