



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 7765-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 30 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 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 Naval Reserve Retirement Point Capture Form (NRPC 1570/9) shows you served a period of active duty from 6 June 1994 until 31 August 2005, had a break in service from 1 September 2005 until 20 April 2009, and then served in the Navy Reserve from 21 April 2009 until your transfer to retired reserve status effective 1 November 2022.

On 4 July 2005, while on terminal leave from active duty, you experienced “a distinct period of abnormally and persistently expansive and irritable mood that required inpatient hospitalization.” You remained hospitalized until 20 July 2005. According to a Naval Medical Center, █, █, Department of Mental Health Medical Board Report, dated 2 August 2005, your

stressors included loss of prestige and career opportunities in the flight community and estrangement from an important romantic relationship. Your symptoms of mild irritability, paranoid/grandiose delusions and expansive mood resolved during your hospitalization, and there was no observed psychotic, manic, or obsessive-compulsive behavior by the day of discharge. After an adequate period of observation, evaluation and treatment, the primary diagnosis was established as Bipolar I Disorder, single manic episode, severe with mood-congruent psychotic features. Due to the high likelihood of future and chronic relapsing, it was felt that you would not achieve full remission after a six to twelve month period of limited duty. The Medical Board recommended referral to the Central Physical Evaluation Board (PEB).

You submitted documentation showing that you were hospitalized on 15 August 2006 at the [REDACTED] Hospital in [REDACTED] and admitted to the Department of Veterans Affairs (VA) Hospital [REDACTED] from 13 September to 26 September 2006, with a discharge diagnosis of "Bipolar Disorder I."

Navy Personnel Command (NPC) informed you on 27 September 2007 and on 8 December 2008 that you did not earn the minimum retirement points in your anniversary year. On 29 January 2009, NPC informed you of your Honorable discharge from the United States Naval Reserve effective 23 January 2009. However, a subsequent letter from NPC dated 12 February 2009 informed you of cancelation of your discharge from the Navy Reserve. NPC transferred you to the Individual Ready Reserve on 19 March 2009¹.

On 18 June 2010, you mobilized on active duty until 29 August 2011. On 1 October 2013, you were promoted to Commander (O-5). On 6 April 2014, you were seen for a command directed evaluation after several members of your command noted odd behaviors. The Staff Psychiatrist evaluation found, in part, that you were not fit for duty due to Bipolar Disorder Type I and recommended that you be placed in a non-drilling status. The physician noted that he filed a draft referral to the PEB, but the decisions as to how it would be processed was deferred to your chain of command and to the PEB System. It was also recommended that you accept psychiatric hospitalization, but that you refused.

You also received an adverse fitness report covering the period 1 December 2013 until 30 April 2014 due to neglecting the development and welfare of subordinates, inability to plan or prioritize, arriving late for duty, and failure to improve his performance despite counseling by the Commanding Officer and Executive Officer. You also received a non-recommendation for promotion. You refused to sign the fitness report, acknowledging you saw and were apprised of your performance, and your right to submit a statement.

¹ Staff Psychiatrist notes from a 6 April 2014 evaluation found "[t]here is documentation that a medical board was to be initiated in 2005, but this was apparently never completed. There is a question as to how he re-entered the reserves. An expeditionary medical and dental screening conducted in 2010 indicates that the patient overtly denies a prior diagnosis of Bipolar Disorder, and there are portions of the medical record missing that may have been lost or purposefully expunged." A 3 December 2021 mental health consultation performed at the [REDACTED] Health Care Center noted petitioner reported "he was previously diagnosed with bipolar disorder by a psychiatrist in [REDACTED] back in the early 2000s but he states it was a 'forensic diagnosis' after a legal situation and states he has gotten it expunged from his record. He states it was the 'wrong diagnosis' and 'I got my lawyers involved', stating that he was just partying a lot back then."

Your Statement of Service for Navy Reserve Retirement shows that you participated in correspondence courses from 2015 to 2018, and you earned satisfactory Reserve years towards retirement. On 12 June 2018, NPC notified you that you completed all requirements to receive retired pay at or after age 60 under the provision of Title 10 U.S. Code Chapter 1223 and BUPERS Instruction 1001.39F.

On 3 December 2021, you went to the emergency room at [REDACTED] Federal Health Center for back pain. Upon examination, the providers noted you were undergoing a manic episode requiring involuntary hospitalization.

On 8 November 2022, NPC notified you that you were transferred to retired reserve status effective 1 November 2022.

For your petition, you contend via your fiduciary by the VA, that the Navy erred by not granting you medical retirement. You request medical retirement, contending the decision to not refer you to the PEB in 2005 was erroneous as you were diagnosed with bipolar disorder in August 2005.

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 Memo. These included, but were not limited to, your desire for a disability retirement and contentions that you deserve a medical retirement because you suffered from mental health conditions while in service. 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.

After thorough review, the Board concluded there was insufficient evidence to show that medical retirement was warranted. The Board noted you satisfactorily served in the Naval Reserve years after the medical board report of August 2005. First, you passed medical examinations certifying you were medically qualified for Reserve duty. Next, you passed medical screening in 2010 and were mobilized on active duty for a year; a period of service which you completed satisfactorily and honorably. Additionally, you had a highly favorable performance record in the Naval Reserve, which earned you a promotion to Commander in 2013. Finally, you were able to satisfactorily complete 20 years of qualifying service by 18 March 2018, and were transferred to Retired Reserve status effective 1 November 2022.

The Board also noted the records indicate you sought and received legal representation in order to expunge the 2005 Bipolar Disorder diagnosis from your record, which explains your continued service in the Navy Reserve. This allowed you to continue your career in the Navy Reserve, which you served satisfactorily until retirement. Following the command directed psychiatric evaluation on 6 April 2014, it was your command's prerogative whether to refer you to the Integrated Disability Evaluation System, but it appears that your command instead allowed you to remain in the Individual Ready Reserve in order to complete sufficient satisfactory anniversary years towards a Reserve retirement. Had you instead been referred to the PEB, the PEB would only have the authority to find you either fit or unfit for continued Reserve service, since there was no evidence of a line of duty determination in your case. Therefore, if found

unfit for continued service in 2014, you would have been discharged from the Navy Reserve, and forfeited your opportunity to qualify for retirement. As a result, 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,

1/8/2024

