



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: 5575-19

Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 October 2020. 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, as well as an advisory opinion (AO) from a qualified mental health professional dated 21 September 2020.

You enlisted in the Marine Corps on 10 September 1998 after receiving a waiver due to a marijuana possession charge. On 3 May 1999, you began a period of unauthorized absence (UA), which ended 5 July 1999. From 9 to 14 July 1999, you were hospitalized for mental health concerns and diagnosed with anxiety disorder, cannabis abuse, alcohol abuse, and personality disorder. While hospitalized, you tested positive for marijuana and amphetamines. On 5 August 1999, you were convicted by summary court-martial for wrongful use of marijuana and sentenced to confinement, reduction in rank, and forfeiture of pay. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse and by reason of convenience of the government due to personality disorder. After you waived your rights, your Commanding Officer (CO) recommended you be discharged with an other than honorable (OTH) characterization of service due to misconduct. After the Staff Judge Advocate determined the administrative separation package was sufficient in law and fact, the discharge authority directed your discharge with an OTH characterization by reason of misconduct due to

drug abuse. On 17 November 1999, you were discharged with an OTH characterization of service.

Your request for a change to your characterization of service was reviewed in consideration of your contention that you were suffering from mental health conditions at the time of discharge. Your request was fully and carefully considered by the Board in light of the Secretary of Defense's 3 September 2014 memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder," of the 25 August 2017 memorandum "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," and the 25 July 2018 memorandum, "Guidance to Military Discharge Review boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations."

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 21 September 2020. The AO stated the primary mental health condition driving your in-service diagnoses of anxiety disorder and personality disorder and your behavior was "severe character pathology." Specifically, your anxiety and depressive symptoms were attributed to your worries about being back on base and your desire to separate from the Marines and return home to your family. The AO further noted you provided post-discharge evidence you have been diagnosed with Bipolar I Disorder with a clinical opinion that symptoms originated prior to enlistment and were present during service. Objective, in-service evidence indicates there was no evidence of a pre-existing mental health condition. Based on the available evidence, the AO concluded that, although you provided evidence of a post-discharge diagnosis of Bipolar I Disorder, the preponderance of available objective evidence failed to establish that you were suffering from the condition at the time of your military service or that your in-service misconduct could be attributed to Bipolar I Disorder or any other mental health conditions. The AO was provided to you on 24 September 2020, and you were given 30 days in which to submit a response. When you did not respond within 30 days, your case was submitted to the Board for review.

The Board carefully reviewed your application, weighed all potentially mitigating factors and considered your contention that the psychological evaluation you received in-service was not properly considered by the command when determining your characterization of service. You further contend that your in-service diagnoses were changed in 2015 to Bipolar I Disorder with depression and general anxiety disorder and, since they existed prior to military service and contributed to your behavior, you should have been discharged for medical reasons. The Board noted that you did not provide supporting documentation or advocacy letters in support of your request for an upgraded characterization of service. Unfortunately, after careful consideration of your contentions, the Board, relying on the AO, did not find evidence of an error or injustice that warrants upgrading your characterization of service or changing your narrative reason for separation, nor did they find sufficient evidence to warrant clemency. Even under the liberal consideration standard, the Board found your misconduct warranted an OTH characterization of service and your assigned narrative reason for separation.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

12/18/2020

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Executive Director

Signed by: █