



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. 6775-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 14 March 2024. 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 and applicable statutes, regulations and policies to include the Kurta Memo. The Board also considered the 9 January 2024 advisory opinion (AO) from a licensed clinical psychologist, a copy of which was provided to you, and to which you provided a response by a psychiatrist.

The Board determined that a 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 commenced a period of active duty in February 1994. On 9 June 1994, you were diagnosed with an Adjustment Disorder and Personality Disorder with a recommendation for administrative separation due to your Personality Disorder. Thereafter, on 16 June 1994, you received non-judicial punishment for insubordination and assault, and you were formally counseled concerning the consequences of further misconduct. On 25 August 1994, you were reviewed by a medical professional for a separation physical, during which you reported that you were in "good health." The medical

professional noted your mental health diagnosis from June 1994 and medically cleared you for separation. You were discharged, on 16 September 1994, in lieu of trial by court-martial. Your separation documentation is not available in your service record and you did not provide it. In 2008, the State of Maryland designated you as an individual with “Most Significant Disabilities” for vocational rehabilitation services purposes and you were diagnosed with Bipolar Disorder in 2008 and 2009.

In 2021, you filed a petition with this Board, which included a letter from your medical provider opining that you were suffering from a Bipolar Disorder at the time of your discharge. The Board reviewed your petition and denied your requested relief as follows:

In reviewing your case, the Board determined the preponderance of the evidence does not support the relief you request. Specifically, the Board determined the best medical evidence in this case was the mental health diagnosis issued contemporaneously with your active duty service. In the Board’s opinion, the medical diagnoses of Adjustment Disorder and Personality Disorder are more reliable since they were issued at the time of your active duty vice 14 years after your discharge. The Board also considered your separation physical during which you reported to be in “good health.” As a result, the Board concluded that the evidence does not support a finding that you were symptomatic for Bipolar Disorder at the time of your discharge or unfit for continued naval service as a result of the condition. Further, the Board considered the fact you were discharged for misconduct that took precedence over any potential disability processing. Based on these factors, the Board determined your narrative reason for separation remains appropriate.

Regarding your request for an upgrade to your characterization of service, the Board concluded to upgrade was not merited. Despite applying liberal consideration and the considering whether clemency was appropriate, the Board felt that the seriousness of your misconduct outweighed the mitigation evidence of your post-discharge Bipolar Disorder. The Board found no evidence you were not mentally responsible for your misconduct and weighed your record of misconduct against only seven months of active service. Based on these factors, the Board determined the weight of the evidence did not support upgrading your characterization.

In your current petition for reconsideration, you contend that during your service you reported multiple incidents of trauma and that one incident resulted in the other service member’s arrest and non-judicial punishment. You also argue that although you sought treatment by Behavioral Health while in the Navy you had minimal treatment due to the lack of recognition by the Navy of your Bipolar Disorder, which resulted in your being inappropriately administratively separated from the Navy instead of going through the Navy’s Disability Evaluation System. As new matter in support of your petition for reconsideration, you provided a letter from the Department of Veterans Affairs (VA), dated 17 April 2023, providing that “the evidence shows that Service connection for treatment purposes only under 38 USC chapter 17 for unspecified sleep wake disorder with bipolar I disorder is granted.” From this document, you argue that, because the VA

has recognized your bipolar disorder is service connected, your case should be reviewed for referral to the Disability Evaluation System or that you should be permanently retired.

In order to assist it in reviewing your petition, the Board obtained the AO from a licensed clinical psychologist, who found as follows:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Temporally remote to his military service, he has received a diagnosis of Bipolar Disorder and the VA has granted service connection for an Unspecified Sleep-Wake Disorder. It is possible that in-service adjustment difficulties could be considered symptoms of an unrecognized sleep-wake disorder. However, his in-service misconduct appears to be consistent with his diagnosed personality disorder, given the Petitioner's report in-service denying both misconduct and mental health symptoms, and the passage of time following military service before symptoms of Bipolar Disorder became sufficiently interfering as to require diagnosis and treatment. Additional records (e.g., post-service mental health the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition other than personality disorder."

You provided a response to the AO, which the Board fully considered, in which you argued that the VA has found your bipolar disorder to be service connected and thus you should have been medically retired from the Navy. In addition, you assert that Personality Disorder discharges have been acknowledged to be inappropriate.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reaching its decision, the Board reiterated its rationale from its decision denying your prior petition. The Board found that you provided insufficient evidence that you should have been referred in service into the Disability Evaluation System. The Board did not observe any recommendations by medical professionals that you should be reviewed by the Physical Evaluation Board for potentially unfitting conditions. Further, the Board substantially concurred with the findings of the AO. With respect to the new matter that you provide, the Board was not persuaded by your reliance on findings by the VA, because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. As described by the AO, your current diagnosis is temporally remote from your service, and was not the proximate cause for your discharge. Rather, the actual reason for your discharge was your misconduct, which resulted in your request for discharge in lieu of a trial by court-martial. Thus, in its review 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,

3/28/2024

