



**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. 9071-23  
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 23 May 2024. 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 Kurta Memo, the 3 September 2014 guidance from the Office of the Secretary of Defense concerning discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense concerning discharge upgrade requests by PTSD or TBI (Carson Memo), and the 25 July 2018 guidance from the Under Secretary of Defense regarding application of equity, injustice, and clemency to discharge upgrade requests (Wilkie Memo) (collectively "the Clarifying Guidance"). The Board also reviewed the 2 April 2024 advisory opinion (AO) from a Licensed Clinical Psychologist, as well as your responses to the AO.

A review of your record shows that you enlisted in the Navy and commenced active duty on 17 November 1993. During your service, you exhibited an upward trend of performance, particularly after you served for several years. For example, your evaluation report for the period 16 May 1999 to 1 October 1999 marked you as promotable, reflected you performed excellent on your physical fitness test, and recommended you for retention. Your evaluation report for the period 16 March 2000 to 15 March 2001 marked you "must promote" ahead of at least half of your peers, recommended you for retention, and provided laudable comments. Your evaluation report for the period 16 March 2001 to 15 March

2002 marked you as “early promote” ahead of at least 20 of your peers, tied with the top six of your peers, and your commanding officer described you as a “truly outstanding sailor.”

On 2 July 2002, you were convicted by a summary court-martial for unauthorized absence for 32 days and missing ship’s movement. You were awarded 30 days restriction and forfeiture of two-thirds of your pay for a month. On 10 October 2002, you received nonjudicial punishment due to wrongful use of amphetamine/methamphetamine, a controlled substance. You were awarded 45 days restriction, 45 days extra duties, forfeitures of half your pay for two months, and reduction in rate to Postal Clerk Third Class. Thereafter, you were notified of the initiation of administrative separation processing for drug abuse and your rights in connection therewith. You waived your right to an administrative board. Ultimately, you were discharged on 28 October 2002 due to drug abuse and you received an Other Than Honorable (OTH) characterization of service.

In your petition, you request to have your discharge changed to a medical disability retirement and to receive back pay of the retirement pay. In support of your petition, you assert that, while you were in service, you sought mental health treatment and, instead of being sent to a psychiatrist and getting medication, you were instead was provided therapy. You also asserted that, post-service, you were diagnosed with bipolar disorder/manic depression, and that you got insomnia while you were in the Navy and you still have it at age 51.

In order to assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your position. The AO reviewed the medical documentation that you provided, and explained:

There is no evidence that he was diagnosed with a mental health condition in military service. He has received a diagnosis and extensive post-service treatment for a mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior. Additional records (e.g., post-service mental health records describing 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 insufficient evidence 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.”

You provided two responses by email to the AO, which the Board carefully reviewed. In those responses, you reiterated your contentions contained in your petition, and you argued that a decision cannot be rendered in your case without a full review of the records. You also provided a link to the definition of Schizophrenia.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, 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 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 reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. As an initial matter, in its application of the Clarifying Guidance, the Board acknowledged that you have asserted that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of analysis, occurred, or was worsened, during your naval service. Next, the Board analyzed whether your condition actually excused or mitigated your discharge. On this point, the Board observed that, even assuming that you had a condition, the Board determined that such condition would not excuse or mitigate your discharge. In making this finding, the Board concurred with the AO, which found that there was insufficient evidence to attribute your misconduct to a medical condition. Thus, the Board determined your assigned characterization of service remains appropriate and is supported by your record of misconduct.

With respect to your assertion that a decision cannot be rendered in your case without a full review of all medical documentation, the Board observed that it is not an investigative body. Nevertheless, the Board's rules allow for you to file a request for reconsideration should you obtain new additional medical or other documentation that you assert supports your position.

Next, the Board analyzed whether your condition mitigated your discharge with respect to the award of a service disability retirement. The Board determined that the record evidence demonstrates that, even if you had a condition, there is no evidence that any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the disability evaluation system. In addition, there is no indication that any leader in your chain of command prepared any non-medical assessment describing your inability to perform the duties of your rate. Further, even assuming, *arguendo*, that you had mental health diagnoses while you were on active duty, it would not necessarily result in the award of a service disability retirement. Service members routinely remain on active duty with diagnoses of mental health conditions without those conditions considered to be unfitting. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have conditions that have been medically-determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your repeated instances of misconduct, and, proximately, your illegal use of amphetamine or methamphetamine. Thus, even assuming that you were found to have a mental health condition during your service, discharges based on

misconduct take precedence over disability evaluation processing. In sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, 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,

6/13/2024

