



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. 683-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 18 July 2024, has carefully examined your current request. 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 the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In addition, the Board again considered the 15 September 2023 Advisory Opinion (AO) from a Licensed Clinical Psychologist and your rebuttal to the AO dated 16 October 2023.

You previously applied to this Board for a discharge upgrade and a change to your narrative reason for separation to reflect a disability retirement or "Secretarial Authority." This Board denied your request on 9 November 2023. The facts of your case remain substantially unchanged.

In your initial petition, you argued that the Navy erred by administratively discharging you with a General characterization of service for misconduct instead of allowing you to medically retire through the Disability Evaluation System (DES) process. You contend the decision to administratively separate you was erroneous as your command did not follow the 1 June 2016 Secretary of the Navy (SECNAV) Memorandum regarding dual processing by: (1) not having a Flag Officer in your chain of command review and make the determination regarding separation

and (2) not having a medical opinion from a military health care provider as to whether your Bipolar Disorder contributed to misconduct. You further argue it was an injustice to administratively separate you with a General (Under Honorable Conditions) discharge as there was significant evidence that your misconduct was due to a mental health condition.

In your initial request, the Board found there was insufficient evidence to conclude that all of your misconduct was due to your mental health condition, and that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. With regard to your contention your command did not follow the 1 July 2016 SECNAV Memorandum, the Board noted that the 30 September 2016 administrative discharge memorandum was signed by the Commander Submarine Force, U.S. Pacific Fleet. Although the officer at the time was a Captain, O-6, he was holding a General Officer Billet. Secondly, the Commander stated in the memorandum that he "reviewed and considered" the opinion of a military health care provider as to whether your medical condition contributed to the misconduct underlying your separation. The Commander ultimately determined separation for misconduct was still appropriate despite your medical condition. Given the totality of the circumstances, the Board determined that although the separation authority was a Captain, O-6, and not a Flag Officer, this is a harmless error and the outcome would have remained the same. The Board therefore did not find error in your discharge or assigned characterization of service.

For this reconsideration request, you submitted a response to the AO and a letter dated 10 December 2015 from your former mental health provider. The Board noted the 10 December 2015 letter was included in the previous petition and is not new material evidence. 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 determined your new evidence was insufficient to conclude that all of your misconduct was due to your Bipolar disorder. The Board noted the AO medical provider reviewed your rebuttal response to the AO and determined the AO should remain unchanged. After reviewing your rebuttal evidence, the Board again concurred with the AO and found insufficient evidence to mitigate your assigned characterization of service or misconduct based discharge.

Therefore, the Board again concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization of service. Even in light of the Kurta and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

8/2/2024

