



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

██████████
Docket No. 7001-24
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.

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 November 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.

You have filed several previous petitions with this Board and, for the purpose of your current request for reconsideration, the Board noted the facts of your case remain substantially unchanged.

You enlisted in the Navy and commenced a period of active duty on 2 July 2003. You were on periods of unauthorized absence from 16 January 2004 to 20 January 2004, 16 February 2004 to 15 March 2004, and 17 April 2004 to 25 April 2004. As a result of your absences, you were charged with offenses, which were referred to a special court-martial. In connection with your court-martial, you were evaluated by medical professionals to determine your competency to stand trial. According to this medical evaluation, you were determined to be competent to stand trial and you were found to not be criminally insane at the time of your misconduct. You were diagnosed with Attention-Deficit Hyperactivity Disorder, Major Depressive Disorder, Borderline Personality Disorder, and antisocial personality traits. On 28 October 2004, you were convicted by a special court-martial. On 3 November 2004, you were referred to a medical evaluation board. On 29 December 2004, you were released from confinement and placed on appellate leave. On 23 December 2004, your medical board was cancelled due to your pending discharge as a result of misconduct, because your misconduct discharge took precedence over your

disability evaluation processing. On 18 December 2007, after finalization of your appellate review, you were discharged with a bad conduct discharge.

In 2014, you submitted an application to the Naval Discharge Review Board (NDRB) seeking to upgrade your discharge. In your application you contended you were improperly diagnosed when you were in the Navy, you were incompetent to stand trial, and the Navy failed to refer you to a medical board. On 24 April 2014, the NDRB denied your application. In 2016, you filed another application with NDRB, which was denied on 24 August 2018.

In 2015, you filed a petition with this Board, seeking similar relief as your current petition, which was denied. In 2016, you filed another petition with this Board, seeking relief similar to the relief you seek in your current petition. In order to assist the Board in reaching a decision, it sought an advisory opinion (AO) from a medical professional. The AO, dated 20 November 2017, was considered unfavorable to your request, finding that your medical conditions were not compensable by the Department of the Navy Physical Evaluation Board. The Board denied your 2016 petition (Docket No. 9979-16), and in 2019, you petitioned this Board for reconsideration (Docket No. 9485-19). On 7 January 2020, this Board denied your petition in light of the seriousness of your misconduct for which you were discharged, and that your discharge based on misconduct appropriately superseded medical evaluation board processing. Further, despite applying liberal consideration to your request, the Board determined that your discharge characterization was appropriate. In 2022, you filed another petition with this Board seeking a medical discharge (Docket No. 4708-22). In review of the materials that you presented and the 2017 AO, as a matter of clemency, the Board found support for mitigation of your misconduct and granted you partial relief in the form of upgrading your discharge to General (Under Honorable Conditions). However, the Board again found no basis for your request for a medical retirement.

You then filed another petition with this Board in 2022 (Docket No. 8888-22), in which you sought reconsideration of your previous requests for military retirement. You included with your petition medical records and a statement from a psychologist, as well as additional documents such as banking information. After careful and conscious consideration of this request for reconsideration, the Board informed you, by its letter dated 6 January 2023, that it denied your request; explaining that it concluded that 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. The Board further explained that in reaching its decision it concurred with the 20 November 2017 AO in finding that the conditions at issue while you were on active duty were “not compensable by the DON PEB” and that the conditions “are considered potentially mitigating but not exculpating with respect to the accrued UCMJ violations.” With respect to the finding that the conditions are potentially mitigating, the Board observed that it already provided you the benefit of mitigation in granting you partial relief in the form of upgrading your characterization of service to General (Under Honorable Conditions). The Board also addressed the evidence that you provided in support of your request for reconsideration, finding that the new matter that you provided was insufficient for the Board to change its prior decisions. Finally, the Board explained that, even assuming, for the sake of argument, that you had a disability condition as defined with the DES during your service, your misconduct discharge would have taken precedence over disability evaluation processing.

Thereafter, in 2024, you filed your current request for reconsideration. It appears that you provided, as new matter, a letter from a psychologist dated 31 October 2022, which is the same psychologist who prepared a letter that you provided in your last request for reconsideration. In its review of this new matter, as well as the entirety of your petition, the Board determined that you provided insufficient evidence that you had an unfitting condition within the meaning of the DES at the time of your discharge and, as it had before, the Board acknowledged that, even if you did have such condition, your misconduct would have taken precedence over your disability processing. 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/16/2025

Executive Director

Signed by: