



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

██████████
Docket No. 9072-24
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 waived the statute of limitations and considered your case on its merits pursuant to the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness (USD (P&R))(Kurta Memo).

A three-member panel of the Board, sitting in executive session, considered your application on 27 March 2025. 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 and the 4 April 2024 clarifying guidance from the USD (P&R) regarding cases involving both liberal consideration discharge relief requests and fitness determinations (Vazirani Memo). The Board also reviewed the 3 February 2025 advisory opinion (AO) from a qualified medical professional and your 3 March 2025 rebuttal response.

A review of your record shows you enlisted in the Marine Corps and commenced active duty on 30 November 1978. During your service, from time to time, your mental health was evaluated, as described more fully in the 3 February 2025 AO. The following facts were further derived from your official military personnel file:

On 31 May 1979, you received nonjudicial punishment (NJP) after a three-hour unauthorized absence (UA) and disobeying a lawful order.

On 11 July 1979, you again received NJP after failing to go to your appointed place of duty on two occasions.

On 6 October 1979, you were convicted by Summary Court Martial (SCM) for two periods of UA totaling ten days. On the same date, you were evaluated by psychiatry and diagnosed with an Acute Situational Disturbance. Additionally, you were hospitalized four days for “unacceptable maladaptive behavior,” and to “rule out the possible presence of Catatonic Schizophrenia.”

After neuropsychiatric evaluation from 25-29 October 1979, you were diagnosed with Acute Alcohol Intoxication after being found “wandering about.”

On 5 November 1979, you were again convicted by SCM for failure to go to your appointed place of duty and disobeying a lawful order.

By memorandum of 9 November 1979, Commanding Officer (CO), [REDACTED], recommended processing you for administrative separation.

From 12-14 December 1979, during a period of hospitalization, you were diagnosed with Concussion Syndrome and Inadequate Personality. It was further noted that you appeared “to continue to manipulate the system to gain the attention [you think] is appropriate for [your] case.” Recommendation was made that you be immediately administratively processed for separation.

On 23 March 1980, an Administrative Remarks (Page 11) counseling was issued due to your “poor attitude, lack of motivation, lack of self-discipline, and the inability to adapt socially or emotionally” to Marine Corps requirements.

On 21 May 1980, you were convicted by Special Court Martial (SPCM) for failing to go to your appointed place of duty and disobeying lawful orders on two occasions.

On 15 August 1980, you were counseled due to your frequent involvement with military authorities.

On 9 October 1980, you were convicted by SCM of two UA periods totaling 38 days.

On 14 October 1980, CO, [REDACTED], notified you of his intent to recommend Commanding General (CG), [REDACTED], discharge you from the Marine Corps by reason of misconduct due to frequent involvement with military authorities. In your response, you waived your right to an administrative discharge board.

By memorandum of 14 October 1980, CO, [REDACTED], recommended your administrative separation under other than honorable conditions, stating your “complete disregard and open defiance to authority and regulations are prejudicial to the good order and discipline of the Marine Corps and can no longer be tolerated.”

By his endorsement of 22 October 1980, CO, [REDACTED], also recommended discharge with an other than honorable characterization of service because you were “a basically unreliable individual whose unruly behavior can no longer be tolerated.”

By his endorsement of 5 December 1980, CO, [REDACTED], recommended discharge under other than honorable condition, stating “[i]n view of his disciplinary record, [Petitioner] is of no value to the U.S. Marine Corps and his immediate discharge is highly warranted.”

By memorandum of 11 December 1980, Staff Judge Advocate, [REDACTED], determined you were “accorded all the rights to which entitled” and concluded the proceedings were sufficient in law and fact.

On 16 January 1981, you were discharged, with an other than honorable characterization of service, by reason of misconduct due to frequent involvement with military authorities.

On 12 October 2010, this Board denied your request to upgrade your characterization of service to general (under honorable conditions).

In your current request for relief, you contend you were erroneously diagnosed with personality disorder when you were actually experiencing symptoms of Post-Traumatic Stress Disorder (PTSD) and other mental health concerns. Specifically, you raise the following contentions summarized below:

(1) Psychiatric evaluation stated there are personality disorders present, and psychotic episodes are developing.

(2) You were diagnosed in December 1979 with concussion syndrome and a “DSM2 301 82 severe personality ineffectual disorder a mental health issue now classified as DSM-5-TR diagnostic criteria for AVPD requires the presence of a pervasive pattern of social inhibition, feelings of inadequacy, and hypersensitivity to negative evaluation...”

(3) You have been diagnosed with Post-Traumatic Stress Disorder (PTSD), Manic Depressive (extreme avoidance issues) and Bipolar Disorder (genetic). These illness are more likely to have exacerbated the mental health issues, “under the intellectual social and physical demands of the USMC.” The diagnosis is considered emotional immaturity and “applies to individuals who are unable to maintain their emotional equilibrium and independence under minor or major stress because of disturbances in emotional development.”

(4) The Marine Corps in the late 70s was hell and extremely racist.

(5) You had obtained a bed rest chit, but when you requested your food be brought to you, rather than another Marine bringing you a plate, you were grabbed by the neck and pulled out of bed. When you took a swing in defense,

two others jumped in, resulting in a concussion state and an eye swollen shut. This incident was the “icing on the cake” for you with the Marine Corps. You could not function anymore – “like [your] mind and body went someplace else and [you] could not put [your] finger on where [you were] any longer.”

As a matter of procedure and equity, your petition was reviewed by a qualified mental health provider. The AO author, after reviewing the available records, carefully traced your mental health diagnosis and the following summarizes some key determinations:

There is some post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service. Additionally, there is in-service evidence of Traumatic Brain Injury (TBI), and mental health concerns experienced during military service. However, there is insufficient evidence to attribute your misconduct to PTSD or TBI.

Post-service records indicate significant treatment for mental health concerns related to Bipolar Disorder or another unspecified mood disorder over many years. While there was no diagnosis of Bipolar Disorder during military service, it is possible that symptoms classified as personality disorder may have been prodromal symptoms of mood disturbance. Further, it is possible that UA and disobedience could be attributed to unrecognized symptoms of irritability or grandiosity associated with the later diagnosis of Bipolar Disorder. In summary, there is some evidence your in-service misconduct may be attributed to unrecognized, prodromal symptoms of Bipolar Disorder.

In rebuttal to the AO, you provided additional contentions/comments that were carefully considered by the Board.

The Board noted you indicated on your DD Form 149 that this was a request for reconsideration of a prior application. In your previous submission, Docket No. NR20100000109, you requested upgrade of your discharge characterization. Unlike your previous request, in the current request you are “seeking a correction of the discharge status that was given to [you] in 1981 be changed to an administrative medical discharge,” interpreted by this Board to be a request for medical discharge or retirement.

In keeping with the letter and spirit of the Kurta and Vazirani Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events experienced and their possible adverse impact on your service. As set forth in the Vazirani Memo, the Board applied liberal consideration to your assertion your mental health condition “contributed immensely” to your in-service behavior and warranted Disability Evaluation System (DES) processing.

The Board began its analysis by examining whether your mental health condition “contributed immensely” to your repeated misconduct which included the imposition of NJP on two occasions, three convictions by SCM, and conviction by SPCM. On this point, the Board observed that you were diagnosed in-service with an Acute Situational Disturbance, Acute

Alcohol Intoxication, Concussion Syndrome, Inadequate Personality, and “several borderline features.” In its review of all available documentation, and consistent with the AO, the Board determined the evidence reflected that you received appropriate treatment for your diagnoses, and ultimately none of your diagnoses resulted in your medical providers referring you to a Medical Evaluation Board (MEB).

The Board next carefully considered whether your post-service diagnoses of PTSD and Bipolar Disorder were “more likely to have exacerbated the mental health issues ‘under the intellectual[,] social and physical demands’” of the Marine Corps. Applying liberal consideration and relying on the AO, the Board determined that, while there is post-service evidence of PTSD and in-service evidence of TBI, there is insufficient evidence to attribute your misconduct to PTSD or TBI. The Board also noted the AO’s clinical opinion “[t]here is some evidence [your] in-service misconduct may be attributed to unrecognized, prodromal symptoms of Bipolar Disorder.” However, even applying liberal consideration to your post-service mental health conditions and the AO’s findings, the Board determined there was insufficient evidence of a nexus between the post-service diagnoses and the in-service misconduct that led to your administrative separation by reason of misconduct. Specifically, the Board noted an absence of medical documentation immediately following your discharge in 1980. As discussed in the AO, your evidence of medication and psychological treatment started in October 2009 and included a diagnosis of PTSD in 2010 that was listed in remission in March 2012; a June 2016 psychiatric evaluation in which you were diagnosed with Bipolar Disorder and PTSD; and a revision to your mood disorder diagnosis to Depressed Bipolar I Disorder in November 2018. Noting this lapse in documented mental health concerns coupled with the almost 30 years between your discharge and eventual diagnosis of PTSD and Bipolar Disorder, the Board determined there is insufficient evidence to overcome the contemporaneous diagnoses and decisions made by the in-service mental health providers.

With respect to the next step of review under the Vazirani Memo consisting of the Board’s analysis of your request for a medical discharge/retirement, the Board observed there was insufficient evidence you had an unfitting condition while you were on active duty such that you should have been placed into the DES. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of his 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 of 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.

However, the Board found insufficient evidence of an error or injustice in the determination your diagnoses did not warrant referral to a MEB. Specifically, the Board noted your mental health was repeatedly assessed by mental health providers throughout your time in service both in clinical and hospital settings and determined there was sufficient evidence you received appropriate treatment for your mental health conditions while on active duty. Additionally, the Board, noting these mental health providers are specifically trained in determining whether a

condition warrants referral to a MEB and further, they are the only authorized means of MEB referral, determined there was insufficient evidence of an error or injustice in their decision your condition did not warrant referral to the MEB.

In conclusion, in its review and liberal consideration of all of the evidence and its careful application of the Kurta and Vazirani Memos, 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,

4/11/2025

