



**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. 9110-24  
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 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 3 March 2025. 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 Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 14 September 2005. On 9 February 2006, you were issued an administrative remarks (Page 11) counseling concerning your mental condition of Bipolar Disorder, which interfered with your duties. You were advised of recommendations for correction action and to comply with the treatment plan provided to you by medical personnel. You were also advised of assistance available to you through the medical department representative and your chain of command. Lastly, you were advised that if your condition continued to affect your performance, you may be processed for administrative

separation. You were afforded the opportunity to provide a written rebuttal to this counseling but chose not to do so.

Shortly thereafter, on 10 February 2006, you completed a Mental Health Statement Form, indicating that your mental health issues started at age 15 and returned two weeks prior to your graduation from MCRD. You then stated you suffer suicidal and homicidal ideations, and were unable to focus when you became angry. You stated you felt your condition interfered with your ability to accomplish the mission and that you could not concentrate due to depression and anxiety.

Also, on 10 February 2006, the Platoon Commander of the Medical Separation Platoon sent a letter to your Commanding Officer (CO) stating your separation would be in the best interests of the Marine Corps. He believed you would be unable to adjust to the lifestyle of the Marine Corps and would never be deployable or able to handle weapons.

On 31 March 2006, you were convicted at Summary Court-Martial (SCM) of violating Article 81 of the Uniform Code of Military Justice (UCMJ) for conspiring with multiple other Marines to violate a lawful general order by participating in the physical assault (by beating) upon numerous Marines who were assigned within the medical platoon. You were additionally convicted of violating Articles 92 and 128 of the UCMJ by participating in those physical assaults and unlawfully striking 10 other Marines on their upper torsos and legs with your hands and feet. You were sentenced to reduction to paygrade E1, confinement for 30 days, and forfeiture of \$849 pay per month for one month.

Subsequently, you were notified of pending administrative separation processing by reason of Convenience of the Government due to a condition not a disability and/or defective enlistment due to fraudulent enlistment. You waived all rights available to you but for the right to obtain copies of documents used in the separation process. Your CO recommended your separation with a General (Under Honorable Conditions) (GEN) characterization of service; citing your pre-service diagnosed bipolar disorder, with ongoing complications. On 9 May 2006, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memo. These included, but were not limited to, your desire to change your discharge characterization of service to Honorable, change your reentry code to RE-1, and remove your SCM from your record. You contend that, in your eagerness to enlist, you omitted a prior to service (age 15) diagnosis of bipolar disorder; which you believe is false and you received after your mother took you to the ER for an alleged suicide attempt. You further contend you were not given the opportunity to contest your discharge or clarify your diagnosis; which denied you due process rights. Lastly, you contend, since discharge, you have demonstrated remarkable resilience and commitment to both personal and professional growth, as articulated in your application package. For the purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application; including your legal brief with exhibits.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 6 January 2025. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. He was diagnosed with a Bipolar Disorder. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. This diagnosis existed prior to his enlistment and was intentionally undisclosed by the Petitioner during pre-enlistment evaluation.

- a. Although the Petitioner has received other assessments post-service that have found no evidence of mental health concerns, there are inconsistencies between his report during those evaluations and his service record that raise doubt regarding his candor or the reliability of his recall.
- b. Additionally, stressors in military life are different from civilian life; consequently, it is possible that his mood symptoms may have improved after separation from service and the restrictive and demanding military environment. In my clinical opinion, the narrative reason for discharge and characterization of service appear appropriate.
- c. Unfortunately, there is insufficient evidence to attribute his in-service misconduct to a mental health condition, particularly given his claims that his misconduct was improperly adjudicated and that he does not have a mental health condition. 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 an error in the in-service diagnosis. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided an additional legal brief containing arguments in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and likely negative impact it had on the good order and discipline of your unit, and on the fellow Marines you harmed. The Board also found that your conduct showed a complete disregard not only for military authority and regulations. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of an error in your in-service diagnosis and insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, you were appropriately referred for psychological

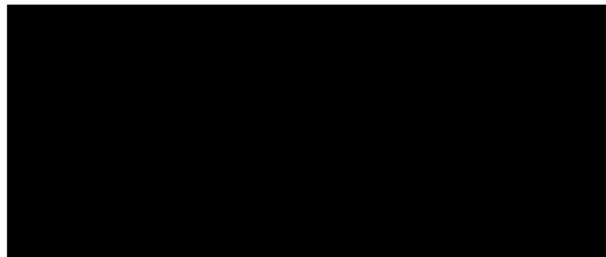
evaluation and properly evaluated during your enlistment; resulting in a diagnosis of Bipolar Disorder. This diagnosis was based on observed behaviors and performance during your period of service, the information you chose to disclose, and the psychological evaluation performed by the mental health clinician. Additionally, this diagnosis existed prior to your enlistment and was intentionally omitted by you during your pre-enlistment evaluation. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge<sup>1</sup>. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/24/2025



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<sup>1</sup> In making this finding, the Board also determined there was no basis to remove the SCM from your record or change your reentry code.