



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

██████████
Docket No. 10715-24
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.

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 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness (USD (P&R))(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 determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows you enlisted in the Navy, commenced active duty on 10 June 2019, and reported for duty in ██████████, in October 2019. The following facts were derived from your official military personnel file and the supporting evidence submitted in support of your requested relief:

On 26 November 2019, you received nonjudicial punishment (NJP) for failing to obey an order/regulation.

On 18 January 2020, you again received NJP for willfully disobeying a superior commissioned officer and disorderly conduct/drunkenness.

On 14 May 2022, you were involuntarily admitted to [REDACTED], located in [REDACTED], after presenting to the Emergency Room for suicidal ideations, depression, and anxiety. Your “admitting diagnosis” was Major Depressive Disorder, severe, recurrent without psychosis and generalized anxiety disorder.

Based on the medical records from [REDACTED] located in [REDACTED], you presented to the AMC for a required military medical evaluation due to suicidal ideations. The physician noted you had previously self-medicated with substances and were at risk for self-harm and not a candidate for deployment or recommended for overseas assignment due to needing more psychological care than could be provided at most overseas locations. Based on the evaluation, you were diagnosed with Major Depressive Disorder, recurrent, severe without psychotic features, and it was noted that you “should be referred to the PEB/MEB process.”

Based on the medical records from [REDACTED] in [REDACTED], you were admitted for in-patient treatment from 10 August 2022 to 7 September 2022 due to “[d]epression, anxiety, and then alcohol too.” Your primary psychiatric discharge diagnosis was Major Depressive Disorder, recurrent, severe without psychosis.

On 6 January 2023, according to your history of assignments, you transferred to Navy Medical Readiness and Training Command (NMRTC), [REDACTED].

On 19 February 2023, you were arrested by civilian authorities for speeding, reckless driving, driving under the influence of drugs/alcohol, possession of an open alcohol container, following too closely, possession of a controlled substance, intent to distribute a controlled substance, and failure to signal lane change or turn.

On 9 March 2023, Commander, NMRTC, [REDACTED], notified you that you were being processed for administrative separation by reason of misconduct due to drug abuse as evidenced by a positive urinalysis for “THC 9” and cocaine. You elected your right to consult qualified counsel, submit a written statement for consideration by the separation authority, obtain copies of documents that would be forwarded to the separation authority supporting the basis for proposed separation, and general court-martial convening authority (GCMCA) review. Because the least favorable characterization of service was noted as General (Under Honorable Conditions) and your time in service was less than six years, you were not entitled to an administrative discharge board.

Based on an email dated 15 March 2023, your counsel notified the Defense Health Agency Assistant General Counsel (AGC) that you were “currently being med-boarded out because [you suffer] from Major Depressive Disorder;” a condition “directly related to the alleged misuse of cocaine and marijuana.” Counsel also requested additional time to obtain medical documents for inclusion in your statement to the GCMCA.

Through emails on 16 March 2023 between your counsel and the AGC, the AGC stated the case had been discussed with the Commander and “we will not deviate from the normal notice ADSEP processing procedure.” AGC further commented that he had been “informed that [your] medboard referral was canceled because it was not a ratable condition. Therefore, he is not in a dual-process and will be administratively separated for misconduct by notice.” In his reply, your counsel objected to the cancellation of your MEB referral after being diagnosed with Major Depressive Disorder.

On 20 March 2023, a behavioral health provider conducted a mental health review due to your pending administrative separation processing. The review noted you had not been diagnosed with Post-Traumatic Stress Disorder or Traumatic Brain Injury. The provider stated you should be “expeditiously processed” and were “cleared for any administrative separation deemed necessary by the command.”

By memorandum of 28 March 2023, you requested resumption of the medical board process because the misconduct you were accused of resulted from your attempt to self-medicate. On the same date, through counsel, you submitted a statement to be considered by the GCMCA Review Authority.

Although the date of the MEB referral is not clear¹, the record is clear that your mental health condition was considered by the MEB. The MEB Report states “a comprehensive review of [your] electronic health record was performed and yielded NO physical conditions that rise to the level of MEB referral.” The report further indicates the case was “discussed in detail with MTF mental health providers (psychiatry and psychology).” It was noted you met the criteria for “substance-induced depressive disorder as evidenced by ongoing depressive symptoms in conjunction with drinking alcohol near daily since the age of 19” and “[p]rominent and persistent disturbances in mood is evident, but is concurrent with ongoing substance use, intoxication, and withdrawal.” The MEB Report also stated you did “not meet criteria for MDD due to criterion C which states that depressive episodes are not attributable to the physiological effects of a substance.” Lastly, the report determined you also met “criteria for stimulant use disorder (cocaine), moderate given ongoing use of cocaine since the age of 29 with increasing over time.” Having reviewed all documentation and considering all potential behavioral health conditions, the MEB determined your “current behavioral health conditions [did] NOT meet MRDP for DES referral.”

By memorandum of 19 April 2023, Commander, NMRTC, [REDACTED], determined it was in the best interest of the Navy to administratively process you for separation due to the seriousness of the offenses and the Navy’s zero drug tolerance policy. In his recommendation to Commander, Naval Medical Forces, Atlantic, the Commander noted, based on the MEB Report, your behavioral health issues stemmed from your pre-existing excessive drug/alcohol usage and “[did] not warrant a PEB referral.” Commander, NMRTC, [REDACTED] concluded the assertions made by yourself and counsel had “no merit.”

¹ The Naval Disability Evaluation System Medical Evaluation Board report indicates several dates because the form “auto populates.” In part 1A, the “auto populate” referral date indicates 4 April 2023. However, the dates in the signatures indicates the October 2022 timeframe.

By memorandum of 26 April 2023, Commander, Naval Medical Forces, [REDACTED] directed your administrative separation by reason of misconduct due to drug abuse with a General (Under Honorable Conditions) characterization of service and assignment of RE-4 reentry code.

On 26 May 2023, you were so discharged.

In your request for relief, you contend that at the time of your misconduct, you were “suffering greatly” from Major Depressive Disorder and substance abuse issues that you were “attempting to get help for.” The Board carefully considered the extensive supporting documentation you provided, to include: medical records, your spouse’s statement, screenshots, email conversations with the chain of command, and the statement from your friend that served with you in Japan. Specifically, through counsel, you contend the following²:

- (1) You suffered from a ratable mental health condition at the time of your discharge, and the Kurta Memo directs the Board to provide liberal consideration and consider the four interrelated questions detailed in the memo.
- (2) Your mental health conditions mitigated your misconduct which was directly related to your mental health conditions and your need to self-medicate.
- (3) You should have been subject to dual processing under Navy regulations, and the decision to cancel dual processing was arbitrary and capricious under the Administrative Procedures Act.
- (4) You suffered from a ratable condition and should have been referred for MEB/PEB processing in May 2022 following the advice of your medical team. Your continuous referrals to medical professionals for suicidal ideation warranted referral to the MEB/PEB months before your misconduct. Further, you met the criteria for Disability Evaluation System (DES) referral.

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 you suffered from Major Depressive Disorder, a ratable mental health condition, at the time of your discharge, which warranted referral to the MEB and ultimately “full medical retirement” through DES processing.

Due to the fact you have contemporaneously filed your request for a discharge upgrade with the Naval Discharge Review Board (NDRB), the Board did not consider your requested discharge upgrade relief but focused solely on your request for full medical retirement.

² The Board noted you have filed contemporaneously with the NDRB for upgrade of your discharge characterization and change to your reentry code and narrative reason for separation. The Board did not consider your discharge-related request that has been submitted to the NDRB. However, the Board did consider each of your contentions as related to the request for a full medical retirement based on your ratable condition of Major Depressive Disorder.

The Board's analysis of your request for a medical retirement was conducted in accordance with the guidelines of the Vazirani Memo. The Board, applying liberal consideration, observed there was insufficient evidence you had an unfitting condition requiring referral to the DES. The Board noted your assertion that dual processing was "canceled" but determined the evidence reflected your mental health condition was referred to – and fully considered – by the MEB. Further, the Board noted the requirement for Flag Officer final determination, in accordance with the 1 June 2016 Secretary of the Navy guidance for DES Dual Processing, was satisfied because Commander, Naval Medical Forces, Atlantic, was the first Flag Officer in the chain of command. Additionally, the Board fully reviewed the MEB Report and noted you provided insufficient evidence of an error or injustice in the MEB's determination you did not meet criteria for Major Depressive Disorder "due to criterion C which states that depressive episodes are not attributable to the physiological effects of a substance." Further, the Board noted you did not dispute the MEB Report's determination you met the criteria for "substance-induced depressive disorder as evidenced by your ongoing depressive symptoms in conjunction with drinking alcohol near daily since the age of 19" and "stimulant use disorder (cocaine), moderate given ongoing use of cocaine since the age of 29³ with increasing use over time." Lastly, the Board noted you did not provide new, additional, or post-service medical documentation that was not available to the MEB and concluded there was insufficient evidence to overcome the presumption of regularity attached to the MEB's determination your behavioral health conditions did not meet Medical Retention Determination Point criteria for DES referral.

You also assert the MEB referral should have occurred in the May 2022 timeframe "following the advice of [your] medical team" after your suicide attempt and later hospitalization for suicidal ideation. The Board also noted the AMC provider's recommendation for MEB referral in the June 2022 timeframe. However, the record is unclear as to the date of MEB referral. (As noted in the discussion above, the digital signature dates on the MEB Report reflect review in the October 2022 timeframe but the auto populated dates indicate April 2023 timeframe.) Even applying liberal consideration to your assertion, the Board concluded the medical review captured in the MEB Report does not change with the date of referral. In the end, the Board determined your "near daily use" of alcohol since the age of 19 and ongoing and increasing use of cocaine since the age of 29, which were underlying factors in the determination your condition did not rate referral to the PEB, are not tied to the date of the MEB referral.

In conclusion, in its review and 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 for full medical retirement 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

³ Based on the MEB Report, the Board noted your date of birth, [REDACTED], and your enlistment date of 10 June 2019, reveal your cocaine use and near daily alcohol use pre-dated your entry into service.

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,

4/15/2025

