



**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. 9757-23  
Ref: Signature Date

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Dear █

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 17 October 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, to include the 25 August 2017 guidance as well as the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo) (collectively the "Clarifying Guidance"). The Board also considered a 30 July 2024 advisory opinion (AO) from a qualified medical professional and your response in rebuttal to the AO.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 16 December 2002. On 23 March 2006, you received nonjudicial punishment due to disobeying an order by having alcohol in the barracks. In your petition, you argued that you incurred post-traumatic stress disorder (PTSD) while you were on a deployment to █ in 2006. Despite this asserted condition, you continued active duty. You further asserted that, during your service, from time to time, you sought mental health treatment, and that your PTSD was misdiagnosed and untreated and, as a result, you used alcohol to treat your PTSD symptoms and became an alcoholic. Ultimately, the Marine Corps sent you to alcohol treatment in 2018. On 12 December 2018, you received nonjudicial punishment for being found drunk on duty.

According to your petition, while you were in alcohol treatment in October 2018, the master sergeant/first sergeant board met, and your record contained a written warning and an adverse fitness report due to the written warning. At the time, you previously pursued correction of your records with this Board in September 2017 but your petition had not been adjudicated by the time the promotion board met in October 2018. You explained in your petition that you were passed over for promotion to master sergeant. On this point, you explained further that this Board granted you relief in June 2020 and, thereafter, you sent a “request to the Commandant of the Marine Corps (MMPR-2) for remedial promotion IAW MCO P1400.32D.”

You reached the end of your obligated service on 23 December 2020; at which time you were separated with an Honorable characterization of service due to completion of required service and were assigned an RE-1A reentry code; which meant that you were qualified for reenlistment. Thereafter, you immediately affiliated with the Marine Corps Select Reserve and was assigned to Marine Corps Advisor Co-A as the Intelligence Advisor Chief. It does not appear that your final fitness report is available but your penultimate fitness report stated that you were “highly recommended for the rank of MSgt,” that you possessed, “the initiative, and resourcefulness to accomplish the most demanding tasks,” and explained that you presented a “rare mix of operational experience and education that undoubtedly establishes him as a top performer amongst his peers.” Further, the fitness report explained that you were accepted in an Applied Intelligence Graduate Program at █ University. This fitness report does not contain any indication that your performance was lacking in any capacity, including that you were unable to perform any of your duties as a result of any physical or mental condition.

Prior to your separation from active duty, you explained that you submitted a pre-separation application for disability compensation benefits to the Department of Veterans Affairs (VA). On 2 November 2020, the VA issued a rating decision and awarded you a 30% disability rating for service-connected PTSD with alcohol use disorder in sustained remission. The VA also assigned you a 20% rating for your left shoulder injury, 20% rating for back issues, 10% rating for foot injury, and 10% for a knee condition. Notably, these disability ratings were not provided by the VA in its capacity within the Integrated Disability Evaluation System (IDES). Further, the ratings by the VA, which were determined prior to your separation from active duty, did not prevent you from affiliating with the Marine Corps Reserve. In fact, the VA contemplates that individuals who receive disability compensation may be fit for drilling in the reserve, and it provides a mechanism for adjustment of the drill pay with VA disability pay.

While you were in the Marine Corps Reserve, you received your first fitness report covering the period through 30 September 2021. According to that fitness report, you took an unauthorized absence, failed to complete a required Combat Fitness Test, and failed to complete your required annual weapons qualifications. The fitness report explained that you joined the unit via direct affiliation and that you participated in several virtual drills, for which you received pay, and after in-person drilling resumed, you no longer participated, and never requested to reschedule or be excused from drills through any normal, timely channels. Further, according to the fitness report, the unit provided you the opportunity to drop to the Individual Ready Reserve (IRR) if you would just appear in-person and make up your unexcused absences, but you then refused all communication. The fitness report said that instead of communicating with your command over these administrative issues, you had an attorney contact your unit. According to the fitness

report, your attorney at that time did not seek to resolve your administrative issues but instead demanded that the Marine Corps cease all communication with you.

Thereafter, you received what is apparently your final fitness report in the Reserve, covering the period through 23 December 2021. According to that fitness report, you continued to fail to report for duty as ordered and were afforded the opportunity to respond, but that you requested through an attorney that all communication between you and the Marine Corps cease. Thus, the fitness report explained that you did not possess the potential for further military service, that you should not be retained, and that your separation from the Marine Corps should be expedited. You were notified by email of the adverse fitness report and, again, you responded through an attorney, who wrote that your Marine Corps contract ended on 23 December 2021. You also admonished your reserved command, through counsel, to “please cease all communication with [Petitioner] regarding his FITREP, administrative separation processing, or any other matters pertaining to the Marine Corps. He no longer wishes to receive any emails, phone calls, or mail from anyone associated with the Marine Corps. Any further unsolicited communication will result in legal action.”

In your petition, you request to (1) have the nonjudicial punishment action dated 12 December 2018 deleted from your OMPF, (2) have the Board direct that you receive a remedial promotion to Master Sergeant (E-8), and (3) that your separation from service be changed from a discharge to a medical retirement. In support of your request, you contend that while you were in service you had undiagnosed PTSD that you incurred during deployment in 2006 that was exacerbated by following deployments and military service. You argued that your untreated PTSD led you to drink excessively. You further state that you received nonjudicial punishment in December 2018 for drinking on duty, was not promoted due to the nonjudicial punishment, and that you were discharged rather than medically retired two years short of 20 years of service. With respect to your nonjudicial punishment and the denial of your remedial promotion to Master Sergeant, you argue that these actions were unjust and your discharge was error.

In order to assist the Board in reviewing your application, it obtained the 30 July 2024 AO, which was considered unfavorable to your request. According to the AO, with formatting edits:

Petitioner’s in-service medical records documented evaluations and treatments for Anxiety Disorder, Unspecified and Other Physical and Mental Strain Related to Work. He was also diagnosed with Alcohol Abuse, Uncomplicated and Alcohol Dependence, Uncomplicated and underwent a brief hospitalization and subsequent 30-day Intensive Outpatient Program for treatment of his Alcohol Use Disorder, followed by enrollment in an Aftercare Program.

Throughout his in-service mental health treatment for Anxiety Disorder, Unspecified and Alcohol Abuse/Dependence, Petitioner was also evaluated for other mental health conditions. During his numerous mental health evaluations and courses of treatment, given his history of combat and report of psychological symptoms related to PTSD, mental health providers considered PTSD and, on several occasions, stated he did not meet full criteria for PTSD (or TBI).

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After review of all available objective clinical and non-clinical evidence, in my medical opinion, it is probable Petitioner experienced early manifestations of PTSD while still in military service, which fully manifested soon after discharge into a diagnosable PTSD condition. The development of his alcohol use disorder likely represented a maladaptive coping strategy to relieve his psychological distress related to his developing PTSD condition and may have contributed to the circumstances leading to his alcohol use misconduct that resulted in his NJP for drinking on duty.

However, at the time of discharge from military service, Petitioner's mental health and alcohol use conditions did not prevent him from reasonably performing the duties of his office, grade, rank, MOS, or rating or otherwise render him unfit for military service. Throughout his numerous mental health evaluations and treatment courses, his condition was never considered unfitting or indicative of referral to a Medical Evaluation Board or Physical Evaluation Board.

Post-deployment, Petitioner's FITREPs continued to document a record of superior sustained performance, with even his FITREP containing his NJP for drinking on duty assessing him as "Highly Qualified" and recommending retention. Post-deployment, his superior service resulted in several personal awards including Navy and Marine Corps Achievement Medal (2011), Joint Service Achievement Medal (2013), and Joint Service Commendation Medal (2015-2016).

Petitioner evidenced success in his academic pursuits, receiving his bachelor's degree in August 2020. Post-discharge, Petitioner maintained full time employment while pursuing graduate studies (5/27/2021 VA clinic note indicated he was going to complete a master's degree in December 2021 with plans to pursue a Masters in Business Administration degree afterwards).

The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been medically retired. Should any further evidence surface supporting unfitness or a disability retirement, resubmission would be appropriate."

You were provided a copy of the AO, and, on 30 August 2024, you submitted a response in rebuttal. You argued that you were "not fit to perform the duties of his office, grade, rank or rating when he was discharged. This conclusion is proved by both evidence in [Petitioner's] original November 2023 petition . . . as well as the enclosures in this memorandum that show his pervasive PTSD rendered him unable to function in a deployed or combat environment, and unable to perform the intelligence-specific duties of his career field." You further argued that:

This failure to refer [Petitioner] for an MEB or PEB, even though he should have been, is due to the erroneous determination that his issue was alcoholism instead of PTSD. The thought process evidenced in his mental health records was that alcohol

treatment and medication for anxiety would resolve his problems and render him fit for duty. His misdiagnosis prevented him from being considered for permanent medical retirement because of the false belief that he had conditions that could be treated to return him to fitness for duty. Had he been properly diagnosed with PTSD, an incurable condition caused by and inextricably intertwined with the military duties he was expected to perform in his rank and rate, it would have been apparent that he was not and never would be fit for duty.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, 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. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of their 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 or 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.

In reviewing your record, the Board concluded 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. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. In its application of the Clarifying Guidance, the Board acknowledged that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of argument, occurred, or was worsened, during your naval service. In accordance with the Vazirani Memo, the Board first applied liberal consideration to your assertion that your PTSD potentially contributed to the circumstances resulting in your discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to PTSD as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

With respect to its analysis of your request for a service disability retirement, the Board observed there is insufficient evidence that you had an unfitting condition while you were on active duty. At the outset, the Board acknowledged that it substantially concurred with the findings of the AO, which it determined to be reasonable and based on substantial evidence in the record. While the Board carefully considered your rebuttal to the AO, on balance, it was not persuaded by the arguments that you made in the rebuttal, and noted they did not sufficiently rebut the findings of the AO.

In reaching its decision on your petition, the Board found insufficient evidence in your service records, and you did not provide any, demonstrating that while you were in service you had an

unfitting condition within the meaning of the DES. As noted by the AO, during your service, you received numerous mental health evaluations, and there is no evidence that any of your providers determined that you should have been reviewed by a medical evaluation board for potential referral into the DES.

Further, the Board noted that there is no indication in your available records, and you provided none, that anyone in anyone in your chain of command observed that you were unfit to perform your duties due to any medical or mental health conditions by way of a nonmedical assessment or otherwise. To the contrary, as described by the AO, after you returned from your deployment in 2006, which you described as the period in which you incurred PTSD, your fitness reports continued to document a record of superior sustained performance. The AO noted that even when you received you nonjudicial punishment for drinking on duty, it assessed you as “Highly Qualified” and recommended that you be retained and, thereafter, you received several personal awards including Navy and Marine Corps Achievement Medal (2011), Joint Service Achievement Medal (2013), and Joint Service Commendation Medal (2015-2016). Even if you were diagnosed with PTSD as a result of your 2006 deployment, that would not necessarily render you unfit within the meaning of the DES. Marines successfully serve every day with mental health conditions while receiving appropriate treatment while they are on active duty. In your case, you served on active duty for nearly 14 years after your deployment in 2006.

The Board also observed that to be eligible for a service disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your end of service obligation and not due to any perception that you were unable to perform your duties based on any physical or mental health limitations. In fact, your record demonstrates that, not only were you found eligible for discharge at the end of your enlistment, but you were also assigned an RE-1A reentry code, which meant that you were eligible for reenlistment. Then, you voluntarily chose to reenlist in the Marine Corps Reserve. Thus, your assertion that you were actually unfit at the time you left active duty is belied by the fact, among other things, that you were found fit for separation from the Marine Corps, and that you were you found fit to enlist in Marine Corps Reserve upon separation and you subsequently enlisted. According to available documents in your OMPF, your career in the Marine Corps Reserve was marred by your refusal to show up for drills and refusal to communicate with your command.

Finally, the Board did not find as persuasive your reliance on findings by the VA granting you service connection for PTSD, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. As described above, your application to the VA while you were still on active duty was routine and was not in any way affiliated with the IDES program. And, despite your VA ratings, you were found eligible to affiliate with the reserve.

With respect to your request to have your nonjudicial punishment from 12 December 2018 removed and to receive a remedial promotion to master sergeant, the Board observed that it relies on a presumption of regularity to support the official actions of public officers and, in the

absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In reviewing your requests, the Board observed that you have not provided substantial evidence to the contrary demonstrating that the imposition of such nonjudicial punishment and the failure of your selection to master sergeant were in error or unjust.

In sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, 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, \_\_\_\_\_

12/3/2024

