



**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. 4876-24  
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 12 December 2024. 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 Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 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 August 2024 advisory opinion (AO) from a qualified medical professional. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

A review of your record shows that you enlisted in the United States Marine Corps and began active duty service on 18 June 2007. On 9 January 2008, you were referred by company staff to be medically evaluated after being in an unauthorized absence (UA) status for two days. On 16 January 2008, you were admitted to the psychiatric ward for Major Depressive Disorder (MDD), moderate, at █ for depressive symptoms and discharged with a diagnosis of Adjustment Disorder with Depressed Mood. On 29 January 2008, you received nonjudicial punishment (NJP) for the UA and you were awarded 14 days of restriction.

You were also formally counseled regarding your misconduct and warned that further misconduct may result in judicial or adverse administrative action.

On 1 February 2008, you went UA again and did not return until you were apprehended on or about 13 March 2008. You were counseled again regarding your misconduct, provided with recommended corrective action and available assistance, and warned of the consequences if you continue to commit misconduct. On 16 April 2008, you received a second NJP for the lengthy period of UA from February to March 2008. As punishment, you received a forfeiture of pay, reduction in grade, and 45 days restriction and extra duties.

On 29 April 2008, your Commanding Officer (CO) notified you of administrative separation processing by reason of misconduct due to pattern of misconduct and commission of a serious offense. You were advised of your rights thereto and waived your rights to counsel and an administrative separation board. On 22 April 2008, you again violated the terms of your restriction and went UA. You returned on your own two days later. Consequently, on 29 May 2008, you were found guilty at summary court martial for UA and violating Article 134 of the Uniform Code of Military Justice for breaking restriction. Ultimately, on 14 July 2008, you were discharged from service; your Certificate of Release or Discharge from Active Duty (DD Form 214) states an Other Than Honorable (OTH) characterization of service with a narrative reason for separation of misconduct.

For this petition, you request to upgrade your characterization of service to General (Under Honorable conditions), to change the narrative reason on your DD Form 214 to Secretarial Authority, and be awarded a medical retirement due to an in-service mental health condition. You contend that you were experiencing prodromal symptoms of schizoaffective disorder while in service and that these symptoms caused homicidal ideation that led to you to go UA to avoid hurting others. You argue that under the Clarifying Guidance, your current diagnosis of schizoaffective disorder excuses and mitigates your misconduct. You also argue that the separation exam was inadequate because it failed to adequately identify the mental health condition as prodromal symptoms that would excuse your misconduct. Further, it noted you were experiencing homicidal and suicidal ideations but still found you qualified for confinement and separation. For the purpose of clemency and equity consideration, you included civilian hospital records showing you have been diagnosed and treated for schizophrenia since 2017. Additionally, your considerable post-military conduct shows you wish to make up for the misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Clarifying Guidance. These included, but were not limited to, your desire for an upgraded discharge and a change to your reason for separation to either Secretarial Authority or a disability retirement. You contend that you deserve a disability retirement because you suffered from a condition while in-service.

Based on your assertions that you incurred a mental health condition during your military service, a licensed clinical psychologist reviewed your request for correction to your record and provided the Board with an AO. The AO stated in part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment, including during a psychiatric hospitalization. His in-service Adjustment Disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. An Adjustment Disorder indicates mental health concerns that arise out of difficulties with stressors, such as military service, and typically resolves once the stressor is removed. There is no evidence of psychotic behavior in service.

There is insufficient evidence to attribute his UA solely to mental health concerns, given his in-service description of his reason for UA and his denial of mental health symptoms at his separation physical, when he was anticipating removal of the stressor of military service.

The AO concluded, “it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to a mental health condition.”

Moreover, the Board noted your CO personally interviewed you prior to recommending you for administrative separation. With regard to his interview with you, your CO stated the following:

“...[h]e then stated that the Marine Corps is not what he expected it to be and that he wanted out. He stated that he will continue to go UA and that he will do whatever it takes to get out. The company leadership has spent a considerable amount of time working with [Petitioner], but [Petitioner] doesn’t get it and doesn’t want help. I talked extensively with [Petitioner] about the commitment he made to the Marine Corps and that he needed to fulfill his contract. [Petitioner] stated that he didn’t care about the contract or anything else and that he only wanted out of the Marine Corps. I told [Petitioner] that I would adjudicate his most recent UA and Breaking Restriction charges at Battalion NJP if he agreed to fulfill his contract and not go UA again. [Petitioner] responded that he would rather take a court-martial and due brig time then stay in the Marine Corps. [Petitioner] can not be trusted to carry a weapon and is only capable of accomplishing the most basic tasks with constant detailed supervision. [Petitioner] has no potential for future service. His conduct and attitude are having an adverse affect on the Marines in Company E and are detrimental to the good order and discipline of this battalion. Therefore, I recommend his immediate discharge.”

In accordance with the Vazirani Memo, the Board first applied liberal consideration to your assertion that your mental health condition 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 the mental health condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct solely to a mental health condition. As explained in the AO, there was no evidence of psychotic behavior during your service. Further, the Board considered the comments from your CO that indicated you intentionally committed misconduct in order to leave the Marine Corps since it “was not what [you] expected it to be.” 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.

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 serving. The Board noted you were diagnosed with adjustment disorder and did not have a psychosis diagnosis until nearly ten years after military service. In addition, the Board observed that in order to qualify for military medical discharge, a medical provider refers a service member to the Physical Evaluation Board (PEB) if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. The Board noted you underwent several psychological evaluations while in service and no medical provider determined that your mental health condition warranted placement on limited duty or referral to the PEB. Furthermore, the Board determined you were ineligible for disability processing since service regulations at the time directed misconduct processing to supersede disability processing. There is sufficient evidence in the record that your mental health conditions were known and considered by the proper authorities when the decision to administratively separate you was determined.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization<sup>1</sup>. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Clarifying Guidance 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

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<sup>1</sup> In making this finding, the Board also determined your basis for separation remains appropriate.

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,

2/7/2025

