



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

[REDACTED]
Docket No. 10602-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014
(c) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017
(d) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018
(e) USD Memo, "Clarifying Guidance to Boards for Correction of Military/Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations," of 4 April 2024
(f) Official Military Personnel File (OMPF)

Encl: (1) DD Form 149 w/attachments

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), seeking to have his naval records reflect that he receive a permanent medical retirement with at least 30% disability and all back pay dating to the effective date of his medical retirement; or, in the alternative, that his case be inserted into the Disability Evaluation System (DES) for evaluation as to whether he should be medically retired.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error or injustice on 18 June 2025 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of Petitioner's application, enclosure (1), together with all material submitted in support thereof, to include Petitioner's request for expedited review dated 24 October 2024, his clarification dated 6 December 2024, his supplemental statement that he provided on 20 May 2025, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies. The Board also considered references (b) through (e), namely, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel

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Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo), and the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness regarding review of cases involving both liberal consideration discharge relief requests and fitness determinations (Vazirani Memo), hereinafter collectively referred to as the Clarifying Guidance). In addition, the Board considered the 2 June 2025 advisory opinion (AO) from a qualified medical professional and Petitioner's responses in rebuttal to the AO.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

- a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner's application was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.
- b. A review of reference (f) reveals that Petitioner enlisted in the Marine Corps and commenced active duty on 30 December 2008. On 15 July 2009, Petitioner received a written warning for unauthorized absence after a special liberty. On 22 October 2009, Petitioner received a written warning for malingering and failing to obey a lawful order.
- c. On 11 November 2009, Petitioner was diagnosed with a Personality Disorder Not Otherwise Specified (NOS). According to the medical record of that date, Petitioner's main complaints were with his command and the imposed structure and accountability, "and this does not seem to be a characteristic that is likely to improve with the resources available on island or compatible with military service." Further, according to the medical record, Petitioner's Primary Care Manager, "would recommend pt be discharged to command in AM with encouragement of expeditious admin sep." On 13 November 2009, a staff psychiatrist at Naval Hospital, [REDACTED], recommended to Petitioner's commanding officer that Petitioner be expeditiously administratively separated, explaining that:

Sequelae of personality-disordered behavior requires extraordinary demands of unit leadership to maintain good order and discipline. This long-standing character disorder is not amenable to treatment or remediation. This condition existed prior to military service and is not considered a disability. SM's personality, social and occupational dysfunction all preceded initial service enlistment. SM is encouraged to continue with mental health care and treatment to assist with behavioral control, but such interventions will be only symptom sustaining not symptom resolving.

- d. On 23 November 2009, Petitioner received nonjudicial punishment for unauthorized absence. On 5 December 2009, Navy Medicine West recommended Petitioner be discharged due to personality disorder.
- e. On 8 April 2010, Petitioner received two written counselings, one for unauthorized absence, for failing to show up to a doctor's appointment, and a second for unauthorized

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absence, for showing up late for work. On 21 April 2010, Petitioner received nonjudicial punishment for insubordinate conduct toward a staff noncommissioned officer and a chief warrant officer. The same day, he was counseled that he had been diagnosed with a personality disorder. On 27 April 2010, Petitioner was counseled and informed that he was being recommended for separation due personality disorder. On 26 May 2010, Petitioner received nonjudicial punishment for failing to obey an order. The same day, he was issued a written counseling for the conduct that resulted in his nonjudicial punishment. On 8 July 2010, Petitioner received a counseling for unauthorized absence while he was placed on restriction.

f. On 21 July 2010, Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He executed his rights form on 23 July 2010. On 29 July 2010, Petitioner's regimental commanding officer transmitted his recommendation that Petitioner be discharged to the Commanding General who was the separation authority. On 30 August 2010, Petitioner's command prepared a non-medical assessment (NMA). According to the NMA, Petitioner had not performed his duties due to his "inability to respond respectfully to authority, tendency towards insubordination, unreliability in tasks, and slovenliness in personal appearance and care. SNM requires an inordinate amount of supervision and attention to do the simplest tasks. When he is having a good day, I can see the spark of real potential and my hopes are raised, but I have always been disappointed in that expectation."

g. On 3 September 2010, Petitioner's Commanding General transmitted Petitioner's administrative separation package to the Commandant of the Marine Corps informing him that Petitioner would be discharged by copy of the letter. In the letter, the Commanding General explained that the Petitioner's separation package had been reviewed by a staff judge advocate for legal sufficiency and that a "medical evaluation of the respondent has been performed, and I have reviewed the results of that evaluation. The respondent has not been diagnosed with Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)." Thereafter, Petitioner was discharged on 18 October 2010 due to Personality Disorder with a General (Under Honorable Conditions) characterization of service. Petitioner's Proficiency and Conduct marks during his enlistment were 4.0 and 3.6, respectively.

h. In support of his request, Petitioner avers that he was discharged without a medical evaluation board despite having chronic adjustment disorder and a service connected knee injury. In support of his petition, he provided a personal statement, dated 18 October 2024, in which he explained:

In June 2023, the Department of Veterans Affairs officially granted me a 100% service-connected disability rating, retroactively effective from 2017, after I successfully appealed my initial rating. This retroactive determination confirms the severity and service connection of my condition. I also have a 10% service connection for my knee injury. These ratings substantiate that my conditions were both service-connected and severe enough to warrant a medical evaluation at the time of my separation. Instead of being processed through a proper MEB, I was given an administrative separation and assigned an RE Code of 3P, indicating failure to meet medical standards. This was a procedural oversight, as my conditions clearly met the criteria for medical separation or retirement.

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i. Petitioner also provided a “supplemental statement” containing argument in support of his request. Further, he provided a copy of a Disability Benefits Questionnaire (DBQ), dated 26 May 2023, which states that, “the Veteran has diagnoses of Unspecified Depressive Disorder, Adjustment Disorder, with Depressed Mood, Unspecified Anxiety Disorder, and Alcohol Use Disorder, Moderate that are at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) incurred in or caused by (the) causally connected to his active duty service, to include related to the in-service symptoms shown during service.” In addition, Petitioner provided a finding from the Department of Veterans Affairs (VA) granting him service connection for unspecified depressive disorder; adjustment disorder with depressed mood; unspecified anxiety disorder; alcohol use disorder (claimed as adjustment disorder with depression and personality disorder) is granted with an evaluation of 100 percent effective 11 July 2017. He was also granted a service connected disability for unstable patellar at 10%.

j. Petitioner has also averred that the Board should apply liberal consideration pursuant to the Clarifying Guidance embodied in references (b) through (e) because, according to Petitioner, he was, “suffering from a mental health condition while in service and at the time of his discharge, which qualifies him for liberal consideration” pursuant to the Clarifying Guidance.

k. To assist it in reviewing Petitioner’s application, the Board obtained the AO. In drafting the AO, the preparer explained that he reviewed the entirety of Petitioner’s Official Military Personnel File (OMPF) as well as all of his medical records from his time in service. In addition, the AO reviewed all materials Petitioner provided with his application as well as the entirety of Petitioner’s medical records from the VA, available on the Joint Logistic Viewer (JLV), which consisted of health records from 4 December 2013 to 23 May 2025. The AO analyzed the foregoing, and explained that, after reviewing all “available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner did not suffer from a medical condition that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating.” The AO continued that, review “of the available objective clinical and non-clinical evidence documented Petitioner remained capable of adequately executing his military duties as reflected in his performance evaluations of Proficiency/Conduct marks In Service and In Enlistment of 4.0/3.6.”

1. In reaching its opinion, the AO explained that review of Petitioner’s commanding officer’s “Non-Medical Assessment indicated Petitioner exhibited behavioral issues consistent with his character pathology such as ‘inability to respond respectfully to authority, tendency towards insubordination, unreliability in tasks, and slovenliness in personal appearance and care’ that interfered with his ‘real potential.’” The AO further observed, with edited format:

There was no evidence that Petitioner was ever considered not fully responsible for his behavior. There was evidence that his mental health providers indicated to Petitioner’s command that throughout his mental health evaluations, treatment, and hospitalizations he remained Fit for duty, responsible/accountable for his actions, and subject to applicable legal, disciplinary, and administrative policies and processes.

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Except for periods of light duty during the initial evaluation/treatment for his left knee condition, and subsequent light/limited duty periods for post-operative convalescence and rehabilitation, Petitioner's left knee condition did not warrant additional or extended periods of LIMDU. He continued to adequately execute the required duties of his military assignments within the parameters of his medical and surgical providers' clinical instructions.

There was no clinical evidence that any of his mental health, medical, or surgical providers considered his conditions unfitting for continued service or were considered referable to a medical evaluation board (MEB) review for possible referral to the Physical Evaluation Board (PEB) for adjudication of fitness for continued service.

Prior to his discharge, Petitioner underwent evaluations for Fitness for Brig Confinement as well as final Separation Physical Evaluations of his medical and mental health condition to determine for fitness for duty/separation from service. In both instances, evaluating physicians reviewed his clinical history, performed appropriate medical laboratory examinations and concluded he was Fit for Brig Confinement and Fit for Separation from military service. These determinations included review of his Adjustment Disorder, Personality Disorder, and Internal Derangement of Lateral Meniscus (Left Knee) diagnoses.

* * *

In my medical opinion, had Petitioner been referred to and MEB and onto the PEB for his Adjustment Disorder and Left Knee Conditions (Personality Disorder separations are due to unsuitability for service not unfitness and are typically not referred to the PEB for adjudication but are administratively processed), it is likely the PEB would have found him Fit for continued military service given the lack of evidence in his service records of inability to execute his military requirements and lack of treating physicians' opinion his conditions required referral to a MEB for either placement on a period of limited duty or consideration for referral to the PEB for adjudication of possible unfitting conditions.

m. 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 referred to the Disability Evaluation System for adjudication of fitness for continued service." The Board considered Petitioner's rebuttal to the AO but observed that it did not contain sufficient information to rebut the findings of the AO.

CONCLUSION

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, In keeping with the letter and spirit of the Clarifying Guidance, the Board determined that it would be an injustice to label one's discharge as being

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for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Regarding Petitioner's request for a service disability retirement or referral to the DES, in keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced, and their possible adverse impact on his service. In its review of the entirety of Petitioner's materials, as described above, the Board concluded that it disagreed with Petitioner's rationale for relief.

In reaching its decision, the Board fully considered the Clarifying Guidance and followed the reference (e) Vazirani Memo. Thus, it first applied liberal consideration to Petitioner's assertion that his mental health condition potentially contributed to the circumstances resulting in his discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed his claim of medical unfitness for continued service due to his 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.

Thus, the Board began its analysis by examining whether his mental health condition actually excused or mitigated his discharge. On this point, the Board observed that, at the outset, Petitioner did not appear to request relief in the form of upgrading his characterization of service. Rather, it appeared to the Board that he only sought relief in the form of a service disability retirement or to be referred to the DES. Nevertheless, the Board observed that Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) describes his narrative reason for separation as personality disorder, and that this reason may cause Petitioner stigma. Thus, based on this Board's inherent authority to correct errors or injustices in naval records, the Board determined that clemency was warranted on this point based on an injustice, and that Petitioner's DD Form 214 should be re-issued to reflect that the reason for his discharge was "Secretarial Authority," and a change to his separation program designator conformed to a Secretarial Authority discharge, in order to alleviate any stigma a personality discharge may impart. Notwithstanding the decision to change Petitioner's reason for separation, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service.

The Board then turned to the next level of analysis under the Vazirani Memo and its analysis of Petitioner's request for a service disability retirement. Here, the Board separately assessed Petitioner's claim of medical unfitness for continued service due to his 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. 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 their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member

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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. The Board further 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 its review of the entirety of the available evidence, the Board found that petitioner provided insufficient evidence to overcome the presumption of regularity that he was properly processed from naval service. In reaching this decision, the Board substantially concurred with the findings and conclusion of the AO. The Board further noted that there is no indication that anyone in Petitioner's chain of command observed that he was unfit to perform his duties due to any medical conditions. Rather, it is clear that he was discharged due to a diagnosed personality disorder. As indicated above, to be eligible for a disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service. In Petitioner's case, the proximate reason for his discharge was his diagnosed personality disorder, which is a non-compensable condition within the DES. The Board considered Petitioner's evidence to the contrary, but it found that, as described by the AO, Petitioner's medical providers in service evaluated him over a period of time during the relevant time frame, i.e., contemporaneous to his service. Further, the naval medical providers are trained to make determinations as to whether certain conditions fall into the category of potentially unfitting conditions. In addition, Petitioner underwent a separation physical examination prior to his separation, and the provider that conducted that examination did not recommend that Petitioner be reviewed within the DES. Thus, the Board determined that Petitioner had failed to provide sufficient evidence to overcome the presumption of regularity that attached to the findings of the providers in service.

With respect to Petitioner's reliance on post-service findings by the VA, the Board concurred with the explanation set forth by the AO, which reasoned that the VA assigns disability ratings to each condition indicated it had been determined to have been incurred in the line of duty. Further, according to the AO, the "VA assigned those ratings based on those conditions and without regard to the issue of fitness to perform military duty," and further, "VA service connection does not dictate unfitness for naval service," rather, the VA "does not determine fitness for military duty, which is the responsibility of the Secretary and military authorities." Accordingly, the Board found Petitioner's reliance upon such post-service VA findings to be unpersuasive.

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 Petitioner's naval records, with the exception of the partial relief described above. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request merits partial relief set forth fully below.

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RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating, for the period ending 18 October 2010, that he was discharged with the narrative reason for separation of "Secretarial Authority," the SPD code of "JFF1," and separation authority of "MARCORPSEPMAN 6214."

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further changes be made to Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/11/2025

