



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 201-25

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

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 13 November 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. In addition, the Board considered the advisory opinion contained in Office of Legal Counsel (BUPERS-OOJ) letter of 29 May 2025 and your response to the advisory opinion.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

In October 1989 your sibling [REDACTED] was born.

In June 1994 you were born.

On 25 October 2010 your sibling turned 21.

On 13 July 2017 you enlisted in the U.S. Naval Reserve for 8 years.

You were discharged with an honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 23 October 2017 to 1 August 2023 upon entering Officer Training Program.

On 18 January 2024, District Court, [REDACTED] issued an amended order appointing co-guardians for adult. Furthermore, the following was provided: 3. The nature and extent of the respondent's incapacity is as follows: The Ward has been diagnosed with Trisomy 21 (Down Syndrome). Developmental Delay, and Epilepsy. As a result, he is unable to make decisions regarding his health, safety, welfare, and finances. "The court appoints the following persons as co-guardian for the ward; [REDACTED]..."

On 22 July 2024, [REDACTED] Integration tested your sibling [REDACTED] and the following summary was provided: [REDACTED] was cooperative and engaged during testing. He appeared to put forth his best effort on all completed tests. Accordingly, the following results are believed to be an accurate representation of his current functioning.

The results of cognitive testing within the Comprehensive Test of Nonverbal Intelligence, Second Edition (C-TONI) indicate that [REDACTED] current level of intelligence is measured to be within the Severely Impaired range.

[REDACTED] completed the [REDACTED] Adaptive Behavior Scale, Third Edition- Domain Level Parent/Caregiver Form ([REDACTED]) in order to rate [REDACTED] current level of adaptive functioning in a variety of domains. The results of the Vineland-3 indicate his current level of overall adaptive functioning is measured to be Low. The results also indicate that he functions at a Low level in the following domains: communication, daily living skills, and socialization. Additionally, his internalizing and externalizing maladaptive behaviors are estimated to be Elevated."

On 13 December 2024, [REDACTED] provided a MEMORANDUM FOR RECORD that "[t]his memorandum is in support of the request for dependency determination for [REDACTED], DOB 17 Oct 1989. After reviewing his medical records, it was determined his medical conditions existed prior to his 20th birthday. The following information is submitted in accordance with service regulatory guidance Air Force Instruction, AFI 41-115, Authorized Health Care and Health Care Benefits the Military Health Services System (MHSS).

- a. Diagnosis: Down's Syndrome, Developmental Delay, Epilepsy. b. [REDACTED] has had Down's Syndrome and Developmental Delay since birth. He developed Epilepsy around age 17.
- c. Due to his medical conditions, he is mostly non-verbal and does not have the capacity to make most decisions including his medical care. These are permanent condition for him.
- d. Age of onset: Birth and age 17 as noted above.
- e. Patient is not able to be independent."

You requested to add your brother as a dependent in Defense Finance and Accounting Service (DFAS), the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that, "[a]ccording to DFAS, my brother had to be my dependent before he turned 21...I would have had to adopt him as a dependent at 16 years old." However, the Board concluded that in accordance with 10 U.S.C. 1072,¹ a dependent can be an unmarried person who is "placed in the legal custody of the

¹ (2) The term "dependent", with respect to a member or former member of a uniformed service, means—(A) the spouse; (B) the unremarried widow; (C) the unremarried widower; (D) a child who—(i) has not attained the age of 21; (ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; or (iii) is incapable of self-support because of a mental or physical incapacity that occurs while a

member or former member as a result of an order of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months and...is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member." On 18 January 2024 you were named a co-guardian for your brother (the ward). However, in accordance with BUPERSINST 1750.10E,² the dependency eligibility criteria as for a ward includes that he must be "[i]ncapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member." The Board determined that because he was not your ward at the time of disability, you are not eligible to claim him as a dependent and a change to your record is not warranted. In this connection, the Board substantially concurred with the comments contained in the aforementioned advisory opinion.

dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; (I) an unmarried person who— is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; (ii) either— (I) has not attained the age of 21; (II) has not attained the age of 23 and is enrolled in a full time course of study at an institution of higher learning approved by the administering Secretary; or (III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II); (iii) is dependent on the member or former member for over one-half of the person's support; (iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and (v) is not a dependent of a member or a former member under any other subparagraph. The term "child", with respect to a member or former member of a uniformed service, means the following: A. An unmarried legitimate child. B. An unmarried adopted child. C. An unmarried stepchild. An unmarried person—(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense), or by any other source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption of the person by the member or former member; and (ii) who otherwise meets the requirements specified in paragraph (2)(D).

² Published on 1 June 2023, (CHANGE) Child—An unmarried natural child, stepchild, adopted child, or child of the sponsor's same-sex married spouse; includes legitimate child (born of marriage), legitimate stepchild, or child born out-of-wedlock (non-marital child). Children may receive medical benefits if they are: (1) younger than 21 years of age; (2) 21 or 22 years old and enrolled in a full-time course of education; (3) 21 or older but incapable of self-support because of a mental or physical incapacity that existed before their 21st birthday; (4) 21 or 22 years old and were enrolled full-time in an accredited institution of higher learning but became incapable of self-support because of a mental or physical condition that developed during these years. Note: If a sponsor provides over 50 percent support to their child, the child is also eligible for shopping privileges if they reside in the sponsor's household or maintained in a household by the sponsor. See terms of Ward or Foster Child as necessary, this applies to a child over 21 years old... (CHANGE) Ward—An unmarried person whose care and physical custody has been entrusted to the sponsor by a legal decree or other instrument that a court of law or placement agency (recognized by the Secretary of Defense) issues. This term includes children for whom a managing conservator has been designated. Wards are dependent on the sponsor for over half of their support. An ID card issued to a ward may not reflect entitlement to MC benefits with respect to determinations of dependency made on or after July 1, 1994 unless the child is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a Territory or possession of the United States) for a period of at least 12 consecutive months and the child is: (1) Younger than 21 years of age; (2) Between the ages of 21 and 23 and enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; and is, dependent on the member or former member for over one-half of the student's support or was at the time of the member's or former member's death; (3) Incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member; and is, dependent on the member or former member for over one-half of the person's support or was at the time of the member's or former member's death; and, resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and is, (4) Not an eligible dependent of any other member or a former member. Note: When documents do not appear to establish a ward relationship, refer the applicant to the base legal office. (See chapter 22 for Marine Corps members.).

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,

11/21/2025

