



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. 416-25
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 11 June 2025. 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 to include the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo) 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 the 17 April 2025 advisory opinion (AO) from a medical doctor. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 6 June 2005. On 30 April 2008, you were issued a Page 11 counseling/warning due to drunk and disorderly conduct. Your Fitness Report ending 30 June 2021 was favorable, noting that you held yourself: "to the highest physical and professional standards and expects the same of his Junior Marines. During the day to day operations of his job he leverages his rank and experience to assist his Marines in the accomplishment of both their personal lives and professional development." The fitness report stated that you were highly qualified for retention and promotion. On 16 November 2021, you were convicted by a summary court-martial for three instances of larceny and sentenced to forfeiture of a sum of pay. Your Fitness Report ending

18 November 2021 noted your arrest for shoplifting, explaining: “On 20210715, the MRO [Marine Reported On] was arrested for theft, and after the MRO’s arrest additional allegations were brought forward that MRO had committed this conduct before. All allegations were substantiated via summary court martial on 20211116 which the MRO plead[ed] guilty.”

According to your application, on 23 August 2022, you reported to Naval Health Clinic Charleston, seeking help both with shoulder pain and other medical issues. You further explained that, on 12 September 2022, you returned to the clinic and spoke in more depth. The 17 April 2025 AO addressed this encounter, explaining that in September 2022, you received mental health screening and an evaluation with a military psychiatrist. You “denied any depressive, hypomanic, manic, anxiety, PTSD, panic, eating disorders, cognitive/learning disorders, character disturbance or psychotic symptoms. He was diagnosed with Other Reaction to Severe Stress and referred to a network provider for individual therapy.” The AO further explained that, according to your medical records, you

reported symptoms of ‘nightmares,’ regret, and anxiety which he believes started ‘years ago’ following his deployment to Iraq in 2008 . . . [when] he witnessed a close friend of his pass away due to combat operations. SM [service member] reported the regret symptoms stem from decisions he has made and noted . . . he turned down a mine clearing operation in order to attend a SGTs [sergeant’s] course. SM reported that a close friend of his went on the operation instead and due to an incident he lost an eye and hand along with 2 other Marines receiving blast injuries. SM reported his belief that this incident would not have occurred if he would have conducted the operation . . . SM reported in February of 2022 he sought and received a referral to a network MH [mental health] provider. SM reported he attended 1 virtual session with his provider and was unsuccessful in booking a following up [sic].

According to the AO, in December 2022, you were evaluated for migraines and you reported a history of:

multiple likely concussions during career in EOD and Marine in various exercises. None documented due to patients fear of repercussions of receiving a concussion diagnosis. Likely nidus [sic] of current neurologic sequelae of reported short term memory loss and migraines Ongoing issue with retaining short term memories day to day, evaluated with previous sleep study but does not remember results . . . P[atien]t states that his migraines have been going on for years and states that he gets them approx[imately] 4 times a week. P[atien]t states that he has been having memory loss for years as well. P[atien]t states that he has been seen for both issues before but never has gone too in depth for them as far as treatment or diagnoses.

According to the AO, in January 2023, you were evaluated by a civilian neurologist. You were diagnosed with Chronic Headache and prescribed a medication. Additional testing was recommended “to determine if there’s objective evidence of cognitive dysfunction” and evaluate claims of chronic insomnia. “Regarding memory, he indicates that ‘my wife has to remind me of things’ but states cognitive issues haven’t impacted his job performance.” On 29 April 2023, you were separated due to non-retention on active duty. Post-service, you received a service

connected disability rating for a variety of conditions set forth in a document from the Department of Veterans Affairs (VA) that you provided.

In your petition before this Board, you request to have your naval record corrected to reflect that you received either a regular retirement or a disability retirement. Alternatively, you request to be referred for evaluation in the Disability Evaluation System (DES). In support of your request, you contend that you served for nearly 18 years in the Marine Corps, rose to the rank of gunnery sergeant, were a Chief Drill Instructor, deployed several times to Iraq, and served as an EOD Operations Chief. You explained that, while you were on active duty, you incurred disabling post-traumatic stress disorder (PTSD) and various physical disabilities; for which you received a 100% VA disability rating. You further argued that when you attempted to reenlist you were denied due to having been accused of shoplifting about \$160 in merchandise from the Army and Air Force Exchange Service (AAFES). According to your petition, under threat of facing a special court-martial, you pleaded guilty at a summary court-martial and your leadership denied you the ability to reenlist. You also argued that you were diagnosed with deficits in short-term memory, possibly connected to traumatic brain injury (TBI), which you contend suggests an alternative explanation for the shoplifting; that is, you forgot to pay for the items. Alternatively, you state that the memory issues should mitigate your offense.

You provided a written statement as well as character references in support of your request. You explain that while waiting for you contract to end, you trained as a fiber splicer with a renewable energy company, and you have since advanced to foreman and been given two pay raises. You included a letter from a co-worker showing that you have continued your commitment to duty performance and to mentoring others, are a key part of any project, go the extra mile to do the work efficiently and safely, and share your knowledge with those who need it.

To assist it in reviewing your petition, the Board obtained the 17 April 2025 AO, which was considered unfavorable to your request. According to the AO:

3. Petitioner contended ‘he was suffering from short-term memory loss, related to his TBI, and . . . he walked off with the [stolen] merchandise because he forgot he hadn’t paid for it.’ He has been granted service connection for PTSD, effective April 2023.

4. Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. He has received service connection for PTSD from the Department of Veterans Affairs (VA).

a. It is likely that his in-service diagnosis of Other Reaction to Severe Stress may have been reconceptualized as PTSD by the VA. However, it is difficult to attribute his misconduct to a symptom of PTSD.

b. Petitioner has also claimed TBI has contributed to memory difficulties, and his misconduct. Although available records note a diagnosis of chronic headache and a history of reported TBI, there is no evidence of memory difficulties prior to his SCM. There is evidence that he received a referral for further evaluation of reported memory difficulties after his misconduct, but no objective evidence of cognitive

impairment. Additionally, memory difficulties described in his medical record are noted to be minor and not interfering with his job performance.

c. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "There is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is some in-service evidence of possible TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

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. As set forth in 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 your 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 your mental health condition actually excused or mitigated your discharge. On this point, the Board observed that, as described in the AO, there is in-service evidence of a mental health condition that may be attributed to military service. The Board also observed that you received an Honorable characterization of service despite your conviction by a summary court-martial of three instances of larceny. Thus, the Board observed that, while you did not specifically seek discharge relief in the form of a discharge upgrade or the like, in any event there was no discharge relief available to you in light of the foregoing, even assuming that you warranted such relief. Although it is not clear if your theory for obtaining a regular retirement is based on your mental health condition. To the extent you argue that you should have remained in service long enough to obtain a regular retirement, the Board was unable to discern a basis for this form of relief

After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to a 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 analyzed whether you should have been placed into the DES while you were in service, and presumably extended on active duty in connection therewith, instead of being refused the ability to reenlist due to your court-martial conviction. On this point, the Board determined that you provided insufficient evidence that there was an error or injustice in the fact that you were not so referred to the DES while in service. In reaching its decision, the Board observed the records reflect that you were receiving appropriate treatment for any mental health concerns and your job performance was suitable

throughout your enlistment. Your fitness report immediately prior to your summary court-martial conviction was favorable and did not reflect any inability to perform your duties. In addition, the proximate reason for your separation from service short of retirement was your non-retention on active duty, despite your effort to reenlist. This is inconsistent, of course, with you having a condition that interfered with your ability to perform the duties of your military specialty.

In addition, the Board observed that during your service, you were evaluated regularly by medical professionals, and it did not appear to the Board that any of those professionals recommended that you be reviewed by a medical evaluation board for evaluation of any potentially unfitting conditions that should be evaluated by the Physical Evaluation Board (PEB). Further, your evidence that you have been able to work productively post-service, and be well-regarded in that position, is inconsistent with you having a condition that rendered you unfit.

Finally, the Board considered whether you were mentally responsible for your misconduct. As discussed previously, you contend that you suffered from short-term memory issues that should excuse or mitigate your misconduct. The Board found insufficient evidence to support such a finding. In making this determination, the Board concurred with the AO that there is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition. The Board agreed that there is no objective evidence you suffered from a cognitive impairment at the time of your misconduct. Again, the Board considered that your 30 June 2021 fitness report reported no performance issues that would indicate a cognitive impairment existed. 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.

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,

7/2/2025

