



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 636-25
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.

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 13 May 2026. 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 Kurta Memo 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 25 September 2025 advisory opinion (AO) from its Physician-Advisor (PA). After it received the PA AO findings, the Board provided those findings to the Department of the Navy Council of Review Boards (CORB), which is the agency within the Department of the Navy with the responsibility to make findings of fitness for service members within the Disability Evaluation System. In response to the Board's request, the CORB assigned a panel of the Physical Evaluation Board (PEB) to evaluate the findings of the PA AO as well as all of the material you provided and it prepared an AO dated 18 March 2026. You provided a response to the PA AO, encouraging the Board to adopt the rationale of the favorable PA AO, but you did not provide a response to the PEB AO, which was considered unfavorable to your request.

A review of your naval records revealed that you enlisted in the Marine Corps and commenced active duty on 24 October 1995. In December 1995, you were bitten by what was believed to be a Brown Recluse spider on the left calf muscle. You were initially treated at sick call for cellulitis on 10 January 1996 and the wound continued to worsen. You underwent additional treatment in April, May, and July 1996. In September 1996, you were placed on limited duty to further recover from surgery. On 12 February 1997, you were issued a Page 11 warning and counseled for your substandard academic performance as a student. You were warned that further deficiencies in academic performance could result in being dropped from the course of instruction. You did not make a rebuttal statement. You were returned to full duty by March 1997, but by April 1997, you began to experience pain with prolonged walking and running. On 15 January 1998, you were issued a Page 11 Counseling/Warning for conduct and lack of judgment. Specifically, you were counseled for allowing and condoning underage drinking of alcohol by junior Marines and that your failure to take corrective action may result in administrative separation or limitation on further service.

On 30 March 1998, you received nonjudicial punishment for insubordinate conduct, failing to obey a lawful order, and making a false official statement. On 15 April 1998, you were issued a Page 11 Counseling/Warning for conduct and lack of judgment. Specifically, you were counseled for failing to go to your appointed place of duty at the time prescribed and for failing to obey orders or regulations and that failing to take corrective action may result in administrative reduction, separation, or judicial proceedings. On 23 June 1998, you received nonjudicial punishment for unauthorized absence (reporting to work two hours late).

On 24 June 1998, you were diagnosed with Adjustment Disorder with depressed features. On 10 July 1998, you received a Page 11 Counseling/Warning for substandard performance. Specifically, you were counseled concerning the display of pornographic materials during a formal inspection and that failing to take corrective action may result in administrative separation or judicial proceedings. On 2 October 1998, you received a Page 11 Counseling/Warning for violation of an order by smoking in his barracks room. You were warned that failing to take corrective action may result in administrative measures or administrative separation. On 14 October 1998, you received nonjudicial punishment for insubordinate conduct (present at a field day re-inspection unshaven). You appealed this punishment, and your appeal was denied on 2 December 1998.

On 19 October 1998, you received a Page 11 Counseling/Warning explaining you were recommended to be separated due to pattern of misconduct. On 30 December 1998, your commanding officer informed you of the initiation of administrative separation processing. On 30 December 1998, you completed your administrative board election of rights and you indicated that you sought legal advice and that you requested a board hearing. In the meantime, on 11 March 1999, you were provided a letter noting that, while you had previously been referred to be reviewed by the PEB for review of fitness, your PEB processing was being terminated due to pending administrative discharge.

Your administrative board convened on 26 March 1999. At your administrative board, you were represented by both a civilian legal counsel as well as a service judge advocate counsel. At the hearing, you testified under oath on your behalf. Ultimately, after review of all evidence, the

administrative board unanimously found that you had committed misconduct, that the misconduct warranted separation, and that your characterization of service should be other than honorable. On 21 April 1999, your administrative separation processing package was reviewed by legal counsel and it was found to be legally and factually sufficient. Thereafter, on 26 April 1999, the Commanding General, Marine Corps Base, ██████████ approved your other than honorable discharge. On 26 May 1999, you were so discharged.

In 2014, you filed an application with the Navy Discharge Review Board (NDRB) seeking an upgrade to your discharge. In your application to the NDRB, you presented the following arguments: (a) members of your command were biased against you and that your discharge was unjust and inaccurate, (b) your characterization of service should be upgraded because you suffered a lot of setbacks due to personal problems, (c) your in-service conduct warrants an upgrade to honorable, and (d) your post-service conduct is worthy of consideration. On 21 October 2014, the NDRB determined, by a 4 to 1 vote, that your characterization of service should be changed to general (under honorable conditions) by a 4 to 1 vote, and that your narrative reason should remain as misconduct. The NDRB based its relief on equitable grounds and post-service conduct.

You provided a 31 July 2019 rating decision from the Department of Veterans Affairs (VA) demonstrating that, post-service, the VA found you to have the following service connected disabilities: (a) major depressive disorder, alcohol use disorder, and PTSD, (b) superficial phlebitis (also claimed as cellulitis due to spider bite) left leg, associated with brown recluse spider bite, and (c) scars, left lower leg (claimed as skin graft scar secondary to brown recluse bite), with a combined disability rating 80% (from 24 Nov 2014).

You filed a prior application with this Board in 2022 in which you requested discharge-related relief. In order to assist it in reviewing your application, the Board obtained an AO from a licensed clinical psychologist (LCP AO) dated 16 February 2022. The LCP AO explained that you averred that you incurred PTSD a result of naval service, which might have mitigated your discharge character of service. The LCP AO explained that, in June 1998, you were diagnosed with an Adjustment Disorder with Depressed Features related to “inability to deal with increased stress and pressure at work,” and that a medical board reviewed your physical limitations and recommended that you be disqualified from further service and be referred to the Physical Evaluation Board (PEB). Thereafter, in March 1999, your PEB referral was terminated as you were pending discharge. The AO explained that, after your service, the VA determined you had service connected PTSD and other mental health conditions. In light of this information, the LCP AO opined that, “it is difficult to attribute his misconduct to a mental health condition, as he contends that the misconduct was due to command harassment, rather than his mental state.” The AO further explained:

It is possible that apathy or emotional numbing, a potential symptom of unrecognized depression or PTSD, could contribute to presenting unshaven at an inspection, but a statement from the time of the incident reported that he was late because he had been the designated driver for his fellow Marines the evening before. Given the inconsistencies, it is difficult to establish a nexus with his mental health concerns and his misconduct.

The LCP AO concluded, “it is my clinical opinion that there is post-service evidence that the Petitioner may have incurred PTSD and another unfitting mental health condition (depression) during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another unfitting mental health condition.” On 18 March 2022, you provided a response in rebuttal to the LCP AO.

The Board considered your application, and, by letter dated 27 April 2022, it informed you that it granted you relief in the form of upgrading your discharge characterization to honorable, changing your narrative reason for separation to Secretarial Authority, and changing your reentry code to RE-1A.

In your current application, you requested to have your record corrected to reflect that you had been awarded a service disability retirement with an 80 percent disability rating for the following conditions: (a) Major Depressive Disorder, Recurrent, Moderate, (b) Post Traumatic Stress Disorder, with Dissociative Symptoms, and (c) Chronic Lower Leg Pain. In the alternative, you requested that the Board direct that you be referred to the Legacy Disability Evaluation System for medical evaluation. In support of your request, you averred that you served honorably for four years, during which you sustained multiple injuries when you served in a qualifying duty status. Specifically, you cited your spider bite and explained that it caused significant prolonged physical impairment. You also argued that you observed at least two suicides in boot camp and you were harassed and hazed by your commanding officer, which caused your PTSD and major depression. You further argued that you were wrongfully discharged and your DES processing never concluded. In summary, you argued that you were failed by both your command and the medical professionals who treated you that you should have been medically retired. You provided several exhibits along with your DD Form 149, including a report from a Licensed Clinical Social Worker, a psychologist, service record documents, as well as documentation from the VA and Board of Veterans Appeals (BVA).

In order to assist it in reviewing your application, the Board first obtained the 25 September 2025 PA AO. The PA AO found the existence of sufficient evidence, that, at the time of your administrative separation for misconduct, you suffered from medical and mental health conditions that interfered with your ability to carry out the responsibilities of your rank and assigned duties. The PA AO specifically described those conditions as Chronic Left Lower Extremity Pain (residual from venomous spider bite) and Chronic Adjustment Disorder. Thus, the PA AO opined that these conditions should be reviewed by the PEB for adjudication. The Board transmitted the PA AO to you, and you provided a response on 6 October 2025. In your response, you urged the Board to adopt the findings of the PA AO.

In light of the PA AO’s recommendation that the PEB review your conditions for fitness, the Board requested an AO from the PEB. The PEB, administratively within the CORB, is the entity within the Department of the Navy tasked with making fitness determinations for individuals within the service DES. According to the PEB:

In summary, having considered the totality of the evidence, the [PEB] concludes the following:

a. Had the Petitioner's DES case proceeded to adjudication, he would have been unfit for Chronic Left Leg Pain and given a disability rating of 10% under VA Code 7804, commensurate with the state of his condition at the time of his separation. Later codes awarded by the VA reflect interval change due to subsequent injuries, not the status of the condition at the time of discharge.

b. The evidence does not support the conclusion that the Petitioner was unfit at the time of his separation for an adjustment disorder, chronic or otherwise, or any other mental health condition. This condition was never validated by a mental health provider. The Petitioner's claim that he was impaired by this condition was not only unsupported by the evidence, it was rebutted by statements made by the Petitioner and his character witnesses at his Administrative Separation Board. The Petitioner's mental status is noted as "satisfactory" in the NMA. Furthermore, given the Petitioner's lack of treatment (and subsequent symptoms resolution), the condition does not meet DES eligibility or administrative processing requirements per reference (c).

c. It is the opinion of the Board that the conclusions of the Petitioner's outside mental health expert should be regarded with caution based on concerns regarding the fidelity of the information provided by the Petitioner, the completeness of the administrative record provided to that examiner, and likely misinterpretation of elements of the in-service medical record due to unfamiliarity with institutional entities and services in the USMC.

You were provided a copy of the foregoing PEB AO, and you did not provide a response in rebuttal.

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 you had already received full discharge relief from this Board in your prior case. The Board determined that, after this step, it would turn to the next step of the Vazirani analysis, namely, to separately assess 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. Before engaging in this analysis,

the Board was first required to determine whether your discharge for misconduct and, thus, your removal from the DES in the first instance, was in error. On this point, the Board determined that your discharge for misconduct was no in error. In reaching its decision, the Board observed that its prior decision granting you discharge relief was based on notions of clemency and mitigation, and informed by your mental health diagnosis. The Board in its prior decision did not find, and it did not find in your current petition, that your punishment for your misconduct, and subsequent administrative discharge, was improper. In fact, the Board observed that your record reflects not only several nonjudicial punishments, but you were issued several written warnings that were specific in your failures, and they included specific ways to avoid further negative actions. In addition, the Board observed that, from a procedural standpoint, you were afforded all rights at all appropriate times, and that you availed yourself of an administrative board. Thus, the Board was unable to find any specific deficiencies that would render your discharge for misconduct improper such that it should result in a reversal of the decision to remove you from the DES. The Board also noted that it found both AOs in this case to be fulsome and rational. While it substantially concurred with the findings of the PEB AO, which essentially adjudicated the conditions that were indicated by the PA AO, it ultimately did not need to rely on the AOs inasmuch as the Board determined that there was no error or injustice in the fact that your administrative processing for misconduct took precedence over your processing through the DES.

In conclusion, 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

5/28/2026

Deputy Director

Signed by: