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

[redacted]
Docket No. 4450-25
Ref: Signature Date

[redacted]

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 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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 April 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 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").

A review of your record shows that on 12 June 2013, you commenced active-duty service with the U.S. Navy.

On 14 March 2018, you were referred to the Disability Evaluation System (DES) to determine whether orthopedic and neurological injuries (cervical degenerative disc disease, cervical radiculopathy, right shoulder osteoarthritis, and right bicep tenosynovitis) rendered you unfit for continued service. The record reflects that you originally suffered those injuries in November 2016 when you fell down four to five stairs. You were initially diagnosed with a right shoulder separation, but you later reported hitting your neck, back, and head during the fall. Your medical record contains internally contradictory information regarding whether you suffered a significant

head injury during that fall, with some clinical notes stating that you experienced a loss of consciousness and others (including by your own report) stating that you had no history of head injuries, concussions, or traumatic brain injury (TBI). But you contend that after your fall, you "forgot every good memory [you] ever had and [you] could only remember the bad." You contend in your personal statement to this Board that you suffered an earlier head injury (in 2014) aboard [redacted] when you caught your helmet on an aircraft stabilizer, fell backward, and hit your head on the deck. The medical record does not reflect the occurrence of, or treatment for, this injury. In the context of a Department of Veterans Affairs (VA) mental health screening, you reported additional head injuries in 2017 (for which you contend you received a CT scan) and 2018, neither of which are recorded in your medical record. You further report in a VA TBI screening that you suffered a head injury in childhood when your father hit your head against a wall.

The record is clear that, despite a long course of conservative treatment following your fall, you complained of persistent severe pain in your neck, back, and right shoulder that your providers attributed to acute nerve impingement in your cervical spine. In the narrative summary associated with your DES referral, your provider wrote:

> [Petitioner] states he cannot direct flight operations on the ship deck, carry chain or chalks, open hatches and lift, carry, pull or push heavy equipment with his right arm. He states he cannot drive and steer an aircraft tow tractor, maneuver in/out of a rack or transit ladder wells and respond to emergency drills aboard the ship. He cannot complete a PRT to standard.

On March 2018 (approximately a week after your DES referral), on the advice of your clinical social worker, you requested that your treating psychiatrist draft a mental health addendum to your DES referral (i.e., to formally refer your mental health conditions to the PEB for a fitness assessment). Your psychiatrist denied your request, finding you "psychiatrically fit for full duty, suitable for retention at this time . . . [and] not impaired by [your] current complaints and [with] no current restrictions related to performing [your] duties." At that time, your active psychiatric diagnoses were: (1) cannabis use disorder; (2) nicotine dependence; and (3) personality disorder.

On 10 September 2018, the Informal Physical Evaluation Board (PEB) found you unfit for continued service due to right cervical radiculopathy. Your PEB finding reflects a 10% disability rating for your unfitting condition and the PEB's intention to direct your disability separation with severance. On 20 September 2018, you affirmatively accepted the PEB's finding by executing an Election of Options. And on 24 September 2018, the PEB notified the Chief of Naval Personnel of its decision in your case and requested your disability separation with severance. That disability separation was not carried out.

Regarding your disciplinary record, on 30 August 2017, 26 October 2017, and 31 October 2017, your urinalyses tested positive for delta-THC. You contend that you began using marijuana in response to an acute psychiatric crisis arising out of a profound low point in your marriage and suicide attempts by both you and your wife. You further contend that you learned that marijuana use eased your chronic neurological pain, and you continued to use it regularly (reported as two to four times per day) for that purpose.

On 1 November 2017, your command notified you of administrative separation (ADSEP) processing due to your three instances of positive drug testing results. Two weeks later, you enrolled in the Substance Abuse Rehabilitation Program (SARP), Level 3, but you were discharged without completing the program because: (1) you made threats, and reported having aggressive thoughts towards your psychologist and the medical staff "because they would not diagnose [you] with bipolar disorder"; and (2) you failed to appear for an assigned watch. While in SARP, you also refused a prescription for Cymbalta, which your provider believed would help relieve your chronic pain and concurrent depressive symptoms.

On 15 March 2018, your command convened an ADSEP board. In support of your case before the ADSEP board, you drafted a personal statement in which you explained the origin of your drug use, "apologize[d] for [your] wrongful actions in breaking rules, regulations, articles, and the code of honor[,]" and "accept[ed] all responsibilities for [your] actions." The ADSEP board recommended your ADSEP with an Other Than Honorable characterization of service.

The next day, your urinalysis again tested positive for delta-THC. In addition, a urinalysis conducted two days prior to your ADSEP board tested positive for d-amphetamine, which you attributed to inadvertently ingesting your son's ADHD medication.

During your ADSEP processing, the Commanding Officer, [redacted], learned of your PEB status, and on 29 September 2018, CO FRTCMA received the results of your DES process (i.e., unfit for service due to cervical radiculopathy). On 13 December 2018, in a letter to the Commander, [redacted], CO [redacted] "strongly recommend[ed] that [you] be separated from the Naval service by Reason of Misconduct – Drug Abuse, that [your] characterization of service be Other Than Honorable, and that the results of your PEB be disregarded." CO [redacted] remarked, "[You have] shown compete disregard and refuse[ed] to uphold Navy Regulations and Core Values, which make [you] incompatible with Naval Service."

Consistent with that recommendation, you were ADSEPed on 29 December 2018.

In 2023, you applied to the Naval Discharge Review Board (NDRB) for discharge relief. The NDRB found in your favor on equitable grounds, awarding you an Honorable characterization of service and changing your narrative reason for separation from "Misconduct – Drug Abuse" to "Secretarial Authority." As grounds for its decision, the NDRB noted in-service diagnoses of PTSD, TBI, and anxiety and found a "clear nexus between [your] mental health and [your] drug use." The NDRB further stated, "It is the Board's opinion that the severity of the Applicant's condition is evidenced by the approved medical separation of the Applicant due to his mental health condition."

In your application to this Board, you requested that your naval records be changed to reflect disability retirement. You contend that three critical errors occurred during the Integrated Disability Evaluation System process, each of which erroneously deprived you of a disability rating of at least 30% and the medical retirement that you qualified for. First, you contend that the Informal PEB erroneously applied the incorrect diagnostic code and rating for the condition that the Informal PEB found unfitting. Second, you contend that the Informal PEB did not

accurately evaluate the sum of your combined physical injuries. Finally, you contend that the Navy failed to refer your diagnosed mental conditions, including TBI, to the DES.

The Board notes that, in evaluating the official actions of public bodies and officers, it is bound to employ the presumption of regularity. Under that presumption, in the absence of substantial evidence to the contrary, the Board will presume that such public bodies and officers have properly discharged their official duties.

The Board carefully reviewed your application, supporting materials, and military record and ultimately concluded that you failed to meet your burden to prove, by a preponderance of the evidence, that the Navy's actions at the time of your discharge were erroneous (i.e., that the actions materially departed from then-applicable processes or standards, or that judgments made in the course of those actions were irrational) or unjust (i.e., that the actions, though not erroneous, were unjust under the particular circumstances of the case, either at the time or in retrospect).

In reaching its decision, the Board fully considered the Clarifying Guidance and employed the analytical framework outlined in the Vazirani Memo. Under that framework, the Board first applies liberal consideration to contentions that a mental health condition potentially contributed to the circumstances resulting in discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assesses claims of unfitness for continued service due to a medical condition (including 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.

In your case, the NDRB, on equitable grounds, upgraded your characterization of service to "Honorable" following its review of your application. You did not request from this Board—nor could you have requested—an upgrade to your characterization of service, as an honorable discharge is the most favorable characterization of service.

The Board noted that the rationale for the NDRB's upgrade and change to your narrative reason for separation appears to be based upon a misapprehension of the evidence of record. As grounds for its decision, the NDRB noted in-service diagnoses of PTSD, TBI, and anxiety and found a "clear nexus between [your] mental health and [your] drug use." The NDRB further stated, "It is the Board's opinion that the severity of the Applicant's condition is evidenced by the approved medical separation of the Applicant due to his mental health condition."

However, as noted in the Advisory Opinion (AO) by this Board's physician advisor, you were not diagnosed with, nor did you seek or receive treatment for, TBI during your service. Your mTBI (mild traumatic brain injury) diagnosis was rendered by the VA in connection with the DES process based only on your medical history. Your medical record also does not reflect that any psychologist or psychiatrist concurred with your therapist's diagnosis of PTSD. In fact, your psychiatrist explicitly clarified his assessment that your formal diagnoses during your time in the DES were cannabis use disorder, nicotine dependence, and personality disorder. Further, contrary to the NDRB's stated rationale for decision, the PEB did not find you unfit for service due to any mental health or TBI-related condition. Your treating psychiatrist denied your request for a mental health referral to the PEB, finding you "psychiatrically fit for full duty . . . [and] not

impaired by [your] current complaints and [with] no current restrictions related to performing [your] duties. When offered the opportunity to submit a statement in rebuttal to the Medical Evaluation Board's recommendations regarding your referred conditions (i.e., orthopedic injuries and radiculopathy only), you chose not to do so. And when the Informal PEB found you unfit only for cervical radiculopathy, you chose not to pursue a Formal PEB (where you could have argued for unfitness due to a mental health or TBI-related condition) and, instead, affirmatively accepted the Informal PEB's finding. Finally, the AO opines:

> Petitioner underwent numerous mental health and substance abuse evaluations and courses of treatment with his presenting symptoms associated with marital, occupational, and chronic pain stressors responding in varying degrees to the range of multi-modal mental health and substance abuse treatment regimens. At no time did his mental health providers consider his mental health condition to be unfitting or even requiring limitations to duty for psychological purposes. He was consistently found Fit for full duty, suitable for continued service, able to reenlist, and responsible for his actions from a psychological perspective.
>
> Regarding his TBI diagnosis, this was rendered as part of the VA IDES disability evaluation process and was not a referred condition from the MEB or PEB. There was no record in-service of significant head injury, physical sequelae, or residuals of TBI which rose to the level of treating providers considering any symptoms as duty-limiting or referrable to a MEB for consideration for Limited Duty or PEB referral.

In your request that the Board correct your record to reflect disability retirement instead of ADSEP, you do not contend that the basis for your discharge (misconduct due to drug abuse) was unsupported by the evidence, nor do you contend that the Separation Authority was not authorized to elect ADSEP in lieu of disability separation when he did so. You do contend, however, that this Board, in reviewing your case following the NDRB's action, must concede that your DD Form 214 no longer references misconduct, and thus misconduct no longer disqualifies you from disability retirement.

Regarding that contention, the Board notes that you are ineligible for disability retirement not because your DD Form 214 reflects misconduct, but because the designated Separation Authority, in accordance with Navy policy, determined that you should be ADSEPed instead of separated or retired due to disability. And the Board concluded that the evidence of record supports that determination, and the determination was not inequitable.

The NDRB—even under the set of facts that it believed applicable to your case (important aspects of which this Board believes to be inaccurate)—did not find your ADSEP to be erroneous or improper. It instead found sufficient nexus between its assessment of your in-service state of mental health and your drug use that it ultimately determined your characterization of service, narrative reason for separation, separation code, and re-entry code to be inequitable. This Board's review of the evidence of record led it to a different conclusion as it relates to your request for disability retirement.

In addition to the evidence cited above in its discussion of the NDRB decision, the Board noted that only a day after your ADSEP board, and following your submission of a personal statement to your command in which you "apologize[d] for [your] wrongful actions in breaking rules, regulations, articles, and the code of honor[,]" and "accept[ed] all responsibilities for [your] actions," you again tested positive for marijuana use. Your serial drug use, drug use even after facing ADSEP for the same offense, preference for illicit drugs over recommended prescription medications, and involuntary discharge from SARP due to your threats to staff and failure to appear for duty substantiate a pattern of behavior that CO [redacted] described as "complete disregard . . . [for] Navy Regulations and Core Values." The Board further notes that CO [redacted] was aware of your explanation for your drug use (as you prepared and submitted it in connection with your ADSEP board) and was aware of your PEB results and associated PEB case file, and he ultimately determined that your misconduct outweighed any potentially mitigating physical or psychological conditions.

On the basis of the above, even considered liberally, the Board found that you failed to meet your burden to prove, by a preponderance of the evidence, that the Navy's approval of your ADSEP in lieu of disability separation or retirement was improper or unauthorized. The Board thus found no error in the Navy's actions.

Having found your ADSEP in lieu of disability separation or retirement not to be erroneous, the Board turned its attention to whether that action was unjust, despite being appropriate under then-applicable standards and procedures. Following its deliberations, the Board, for the reasons cited above, found that you failed to show, by a preponderance of the evidence, that the unique circumstances of your case were such that a formally correct action nevertheless resulted in injustice.

The Board then turned to the second step of the Vazirani framework for its analysis of your request for disability retirement. However, having found that your ADSEP in lieu of disability separation or retirement was not erroneous or unjust, a formal determination regarding your fitness for duty is irrelevant to the fact and consequences of your administrative discharge (i.e., ineligibility for disability separation or retirement).

In sum, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

5/8/2026

[redacted]