



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

[REDACTED]
Docket No. 4476-25
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 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 17 September 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 the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding upgrade requests by Veterans claiming post-traumatic stress disorder (Hagel 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”). The Board also considered the 11 August 2025 advisory opinion (AO) from a medical professional and your response to the AO.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 5 June 2001. According to the AO, in January 2002, you sought medical treatment for difficulty sleeping and headaches. Treatment records stated, “P[atiens]t denies having job or personal stress. P[atiens]t states his body is tired, but every time he goes to ‘lay down to sleep,’ he ‘can’t.’” A possible Adjustment Disorder was noted at the time and, in a February 2002 follow-up medical appointment, you were diagnosed with Transient Insomnia. In March 2002, you continued to complain of a headache.

On 8 October 2003, you received non-judicial punishment (NJP) for three periods of unauthorized absence (UA) from your place of duty. You also received a written counseling for this NJP. According to the AO, in February 2004, you received medical treatment for "headache, dizzy, feels faint – started Friday. P[atiens]t says, 'Hit on side of head on Friday.'" You were placed in a "sick in quarters" status for 24 hours.

In August 2004, you were formally counseled for unacceptable off-duty incidents. In addition, according to the AO, your Limited Duty status for pain in your knee ended and you were found fit for full duty. You submitted a formal statement that family stressors contributed to your NJP, which resulted in lack of motivation, as "I found new friends and got deeper into my music not keeping the rules and regulations on my 'front burner.'" On 24 November 2004, you received NJP for wrongful use of marijuana. In December 2004, you were formally counseled for violating the USMC substance abuse policy. Your command noted that you had been counseled for a number of events over the previous six months, including engaging in a fight at the gym, playing basketball while on limited duty, driving with a suspended license, facing perjury charges as a witness in another Marine's domestic violence case, and trespassing on the property of another Marine.

Consequently, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 22 February 2005, your chain of command recommended to the separation authority that you be discharged. The separation authority thereafter transmitted notice to the Commandant of the Marine Corps that it directed your separation. You were discharged on 24 February 2005 with an Other Than Honorable (OTH) characterization of service due to misconduct.

Post-discharge, you filed an application with the Naval Discharge Review Board (NDRB) in which you requested an upgrade to your characterization of service due to post-service conduct. On 19 March 2009, the NDRB denied your request.

In your petition, you request that your naval record be corrected to reflect that your characterization of service be upgraded to Honorable or that you receive a medical retirement retroactive to 1 October 2005 with associated corrections to your DD Form 214, back pay, and benefits. In support of your requests, you contend that, while you were on active duty, you were undergoing a Medical Evaluation Board but you were separated instead in violation of the applicable Disability Evaluation System instructions. You argued that your separation caused your loss of medical retirement and benefits and the Department of Veterans Affairs (VA) has since acknowledged your eligibility for compensation, which, according to you, confirms your separation was an error or injustice.

In order to address your claims, the Board obtained the 11 August 2025 AO, which was considered unfavorable to your requests. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has denied service connection for a mental health

condition. Although the Petitioner has submitted some in-service medical records of a head injury, there is insufficient evidence of on-going residual symptoms consistent with TBI. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service of a nexus with his misconduct. There are inconsistencies between in-service statements regarding his misconduct and his current report that raise doubt regarding his candor. 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, "it is my considered clinical opinion that there is insufficient evidence of TBI or a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI or a mental health condition."

You responded to the AO in which you argued that the AO applied the wrong regulatory standard. You also argued that the AO acknowledged but minimized your extensive in-service medical documentation, which included difficulty sleeping and diagnosis of transient insomnia, sleep disturbance, treatment for head injury with dizziness and headache, chronic left knee injury, surgery, and continued duty limitations documented from 2003- 2004. You argued that these records establish the onset of both physical and mental health conditions during service and that the AO's conclusion that there is insufficient evidence fails to account for the totality of these documented events. You also argued that, in addition to the in-service medical records and post-service diagnoses, you are presently service-connected by the Department of Veterans Affairs (VA) at a combined rating of 70%, which includes 30% for Insomnia Disorder with Traumatic Brain Injury (TBI) and 30% for Migraine, both of which the VA has determined are directly related to your military service, which you avers are based on review of your service treatment records, VA medical examinations, and independent medical evidence.

The Board carefully reviewed your petition and all of the material that you provided in support of the petition but 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 excused or mitigated your discharge. On this point, the Board considered that you have asserted that, post-service, you have been granted service connection by the VA for Insomnia Disorder with a TBI condition, which the Board acknowledged. Thus, in applying liberal consideration consistent with the Clarifying Guidance to its review of your request, the Board acknowledged your assertion of this condition. Thus, the Board analyzed whether your condition excused or mitigated your discharge. Despite its application of liberal consideration, the Board found

insufficient evidence of a basis for excusing or mitigating your discharge. In reaching its decision, the Board substantially concurred with the finding of the AO, which opined that there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The AO further explained that “available records are not sufficiently detailed to establish clinical symptoms in service of a nexus with his misconduct” and that there “are inconsistencies between in-service statements regarding his misconduct and his current report that raise doubt regarding his candor.” Further, based on its review of the overall circumstances of your NJPs while you were in service, the Board found there was insufficient evidence to support mitigation of your OTH characterization of service. In relying the AO, the Board took into consideration your arguments in response to the AO but did not find them persuasive.

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. In so doing, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System (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 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. In addition, the Board observed that it applies 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.

Here, the Board again substantially concurred with the finding of the AO, which explained that you were not diagnosed with any mental health conditions while you were in service. Further, even if you were, the Board observed that a diagnosis of a health condition, such as your asserted Insomnia with TBI, does not necessarily or automatically result in such condition being considered unfitting within the meaning of the Disability Evaluation System (DES). In your case, your record also lacks any documentation from your chain of command or from any medical providers describing your inability to perform the functions of your office, grade, rank, or rating. In fact, the Board observed the proximate reason for your discharge was your misconduct and not for any perceived inability to perform your duties. 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,

11/14/2025

