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

[redacted]
Docket No. 4519-25
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 8 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. The Board also considered a 25 February 2026 advisory opinion (AO) from a qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your naval record reveals that you enlisted in the Marine Corps and commenced active duty on 13 April 2004. On 18 May 2009, you were issued a Page 11 counseling explaining that you had musculoskeletal lower back pain without radiculopathy. On 18 June 2009, a regimental surgeon [redacted] reviewed your medical records and recommended that you be administratively separated due to a condition that was not a disability, explaining as follows:

> "[Petitioner] is being recommended for administrative separation for a medical condition, which is not a disability, but is not compatible with continued military service. He has chronic musculoskeletal low back pain without radiculopathy which interferes with his ability to perform the physical duties of a US Marine. He has increased pain with running, forced marches, wearing body armor or packs, heavy lifting, or any strenuous activity. His symptoms are to the degree that he is

> unable to perform his duties or participate in unit physical fitness training and the USMC physical fitness test or MCMAP training. He has been treated with all available therapies to include physical therapy, sports medicine and rehabilitation, chiropractic treatment, and multiple medications.
>
> He has had multiple periods of light duty dating back to just after recruit training. He has had X-Rays of his spine which show only thoracolumbar dextroscoliosis, which was noted on his enlistment physical. While he has been compliant with the activity recommendations of his treatment, and has improved for short periods of time, he has been unable to remain fit to perform his duties for any length of time, and was dropped to [redacted] due to being unable to train and deploy with his parent unit.
>
> As this condition is not service-related, is not expected to improve with any additional therapy, and is not surgically correctable, [Petitioner] is being recommended for separation. [Petitioner] has 5 years of active duty (allowed to re-enlist by previous unit by stating that his back was no longer bothering him, but began complaining of symptoms again during pre-deployment training), and deployed once in 2006. As his medical condition is a chronic process, and is not due to injury related to his military service, he is recommended for administrative separation as above. [Petitioner] has been counseled on this process and is in agreement.

On 19 June 2009, you were issued a Page 11 counseling explaining that you were being recommended for discharge due to a condition, not a disability. On 12 August 2009, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On the same day, your headquarters company commanding officer recommended that you be discharged due to a physical condition not a disability. On 27 October 2009, your regimental commanding officer concurred in the recommendation that you be discharged. On 24 November 2009, your commanding general, the separation authority, directed that you be discharged by reason of convenience of the government due to a condition, not a disability (musculoskeletal lower back pain) with an Honorable characterization of service. You were so discharged on 15 December 2009.

In your petition, you requested that your Certificate of Release or Discharge from Active Duty (DD Form 214) changed to reflect that you were retired from service due to a medical retirement. In support of your request, you assert that you should have been medically retired due to service connected, debilitating lumbosacral pain that rendered you unfit for duty as a Rifleman. You further argued that your administrative separation for condition, not a disability due to chronic low back pain was "unjust and inequitable," stating that, throughout your tenure in service, you were "plagued with awful back pain as a result of scoliosis that did not improve over time—regardless of physical therapy, medication, light duty, chiropractor visits, etc." In addition, you asserted that, although you were "diagnosed with scoliosis at MEPS, [you] had never experienced recurring back pain in [your] life, and [you were] found medically fit to enlist. It did not take long for the rigors of being an 0311 Rifleman in the USMC to take its toll, and [you were] simply unable to perform [your] duties after serving for nearly six years." You also

argued that it was legal and procedural error for the regimental surgeon to recommend that you be administratively separated without first determining whether you were entitled to retirement for disability with benefits. You provided letters of support and personal documents in further support of your request for relief, such as photographs, internet records, business-related documents, and a personal resume attesting to post-military accomplishments and accolades.

In order to assist it in reviewing your petition, the Board obtained the 25 February 2026 AO, which was considered unfavorable to your request. According to the AO, a review of all available objective clinical and non-clinical evidence yielded a medical opinion that, at the time of your discharge from the Marine Corps, the preponderance of available objective clinical evidence did not support your contention that your pre-existent Scoliosis and in-service low back pain conditions precluded the execution of your military duties or rendered you unfit for service. Further, the AO opined that the evidence did not support your assertions that your medical providers erred in not referring you into the Disability Evaluation System (DES), or that your command erred in following recommendations from appropriate medical authorities in separating you for a condition not a disability. In reaching his opinion, the preparer of the AO reasoned as follows:

> Except for recurrent episodes of light duty for periods of evaluation and treatment for his low back condition, Petitioner continued to successfully execute the required duties of his military assignments as reflected in his performance evaluations. There was no evidence Petitioner's medical condition resulted in medical providers (representing a range of multidisciplinary specialties and treatment modalities including Operational Medicine, Chiropractic Medicine, Sports Medicine and Rehabilitation, and Physical Therapy) considered his conditions appropriate for referral to a Medical Evaluation Board (MEB) for placement on a period of Limited Duty or consideration of referral to the Physical Evaluation Board (PEB) for adjudication for unfitness for continued service.
>
> Additionally, the mere presence of disease or injury alone does not justify PEB referral. Referral should take place only when, in the opinion of a medical board, the defect may materially interfere with the member's ability to perform reasonably the duties of his or her office, grade, rank, or rating/MOS on active duty. (SECNAVINST 1850.4E, para 3202).
>
> Given the clinical records and provided testimony/evidence showed Petitioner's low back pain condition was consistently associated with Petitioner's pre-existing Scoliosis condition by Petitioner, counsel, and his treatment providers; did not arise from a military-related injury or circumstances other than routine activities associated with military service; did not evidence any significant impairment to his range of motion (other than associated discomfort with bending to one side) or evidence of radicular symptoms (symptoms arising from spinal nerve root compression); did not evidence any findings on X-Ray examinations of structural pathology that would account for his pain; did not exist during his civilian life and activities prior to his military service; arose soon after initiation of routine military training and physical activities; reportedly diminished/returned (and on occasion

> reportedly ceased) with medical treatment all provided support for Petitioner's medical providers determination that Petitioner's low back pain did not meet the "unfit" threshold for a condition originating solely from his military service, but more accurately reflected the natural consequence and progression of his pre-existing Scoliosis condition in the military environment. This more accurately rendered the condition unsuitable for military service than unfitting, supporting the command's decision for final administrative disposition of his chronic condition as appropriate.

The AO concluded, "In summary, in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been referred to the Disability Evaluation System."

The Board carefully reviewed your contentions and the material that you submitted in support of your request and it disagreed with your rationale for relief. The Board analyzed whether you should have been placed into the Disability Evaluation System (DES) and reviewed by the PEB while you were in service. Here, 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 analyzing your request, the Board considered 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.

In support of its finding of insufficient error or injustice, the Board substantially concurred with the finding of the AO. The Board found the AO to be rational and based on substantial facts and it incorporated the rationale of the AO into this decision in its entirety. Notably, the Board observed that the finding that you had a condition, not a disability, was rendered while you were in service in 2009. The decision was based on medical evaluations of you that were contemporaneous to your service. Further, the medical professionals that made the decision in 2009 were specially trained in evaluating service members and they were aware of the DES process and requirements to process service members who meet the appropriate standards for referral to the DES. In your case, those professionals made the determination that you had a condition, not a disability. In its fulsome review of the evidence and argument that you made in your petition and its associated enclosures, the Board determined that you provided insufficient evidence to overcome the presumption of regularity that attached to the findings of the service medical professionals made during your time in service. In conclusion, in its review of all of the evidence, 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,

4/27/2026

[redacted]