



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

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Docket No. 4988-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 14 January 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 relating to the consideration of requests for modification of discharge due to mental health conditions, sexual assault, or sexual harassment (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").

A review of your naval record reveals that you enlisted in the Marine Corps and commenced active duty on 10 May 2004. On 31 January 2005, you received nonjudicial punishment (NJP) for unauthorized absence and for drunkenness. After your NJP, you were issued a written counseling, warning you that further violations may result in judicial or adverse administrative actions. On 31 March 2005, you received NJP for indecently exposing yourself while urinating in the barracks smoking area. After your NJP, you were again issued a written counseling you concerning your behavior and advising you on methods of correcting your behavior.

Thereafter, you were tried by a special court-martial on 2 and 19 September 2005, at which you were found guilty of unauthorized absence, disrespect to a sergeant, and destroying government property by punching a hole in a barracks wall and destroying a television set. You were

sentenced to four months confinement, forfeitures of pay, and a Bad Conduct Discharge (BCD). On 26 September 2005, you underwent a Separate Physical Evaluation (SPE); which found that you were fit for separation. The SPE noted that you had alcohol dependence and that psychology was “noted;” but that your physical exam was otherwise negative for any findings. On 6 April 2007, the █ informed your command that it appellate review of your court-martial conviction was completed. Thereafter, your BCD was executed and you were so discharged on 10 May 2007.

In your application to this Board, your requested relief simply expressed that you received a BCD. Thus, the Board presumed that you sought to have your BCD upgraded or, in the alternative, that you sought to have your discharge changed to a service disability retirement. In support of your request, you asserted that your bad conduct discharge was unfair because, when you were in service, you were diagnosed with Dysthymia Disorder, and later sought treatment for it from the VA. You provided VA medical records in further support of your request. The VA medical records reflect a variety of diagnoses including, among others, alcohol use disorder (AUD), major depressive disorder (MDD), and post-traumatic stress disorder (PTSD).

The Board carefully reviewed your contentions and the material that you submitted in support of your request and disagreed with your rationale for relief. In reaching its decision, 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. Further, in light of the fact that you raised your post service mental health diagnoses by the VA, the Board fully considered the Clarifying Guidance and followed the Vazirani Memo. Thus, it 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 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.

Therefore, the Board began its analysis by examining whether your mental health condition actually excused or mitigated your discharge. On this point, the Board considered that you were diagnosed by the VA, post-service, to have AUD, MDD, and PTSD, among other conditions. Thus, for the purposes of application of the Clarifying Guidance, the Board considered these diagnoses in deciding whether discharge relief is appropriate in your case. Despite its application of special and liberal consideration to your request, the Board was unable to find an error or an injustice in your discharge and its characterization. At the outset, the Board considered that the VA medical records containing your diagnoses were distant in time from your discharge from service, which was in 2007. In addition, the Board observed that the information contained in the documents did not provide any nexus or context to your behavior while you were in service. The Board also considered, however, that the medical provider in your SPE specifically noted your alcohol dependence, as well as providing a notation referencing psychology, in your SPE report. Thus, the Board considered the totality of the circumstances, applying liberal consideration, and balanced the misconduct that you engaged in while you were in service on the one hand, with your mental health conditions on the other hand. In reviewing

your record of misconduct, the Board considered that the proximate reason for your discharge from service was as a result of a court-martial, at which you would have been assigned legal counsel and afforded significant procedural protections, including appellate review that is incidental to having been sentenced to a BCD. Thus, in light of the seriousness of your misconduct, as evidenced by two NJPs and a conviction by a court-martial, even after the application of liberal consideration, the Board was unable to find an error or an injustice in your discharge from service.

After making that determination, the Board then separately assessed whether there was an error or injustice in the fact that you were not processed through the Disability Evaluation System (DES) and found unfit as a result of a medical or mental health condition. Here, the Board was unable to find an error or injustice in naval record. In reviewing evidence of errors or injustice with respect to disability retirements, the Board observed that, in order to qualify for military disability benefits through the 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 also applies the presumption of regularity, which it described above.

In light of the foregoing standards, the Board observed that your naval records do not reflect any indication that, while you were in service, there was any error in the fact that you discharged from service as a result of the conviction of a court-martial. In reviewing all of the materials that you provided, the Board observed that post-service VA findings are not generally persuasive on the issue of whether you had an unfitting condition in service because the VA does not make determinations as to fitness for service as contemplated within the service DES. Further, the Board considered, as noted above, that the proximate reason for your discharge from service was as a result of a court-martial conviction. In that regard, the Board further considered that processing for misconduct, such as by way of a court-martial, takes precedence over disability processing. In your case, even assuming, for the sake of argument, that you had a condition for which you were to be processed through the DES, your court-martial case and subsequent discharge would have taken precedence over your DES processing. 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 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,

1/30/2026

