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

[redacted]
Docket No. 5179-25
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [redacted]

Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," dated 25 August 2017 (Kurta Memo)
(c) USD Memo, "Clarifying Guidance to Boards for Correction of Military/Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations," dated 4 April 2024 (Vazirani Memo)
(d) SECNAV M-1850.1
(e) Official Military Personnel File (OMPF)

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) Physician Advisor Memo Docket No. 5179-25, subj: Advisory Opinion ICO Former Member [Petitioner], 13 Mar 26
(4) Service Treatment Records, [redacted] 12 Sep 00
(5) Service Treatment Records, [redacted], 28 Feb 01
(6) Service Treatment Records, [redacted], (undated)
(7) Service Treatment Records, [redacted], 10 Dec 01
(8) Service Treatment Records, [redacted] 25 Mar 02
(9) Report of Medical Examination, 24 Apr 02
(10) Clinical Treatment Note, [redacted] VA Medical Center, 8 Apr 03
(11) Department of Veterans Affairs Rating Decision, 11 Aug 23
(12) President, Physical Evaluation Board email, subj: CUI: CORB Review Request, 25 Mar 26

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed Enclosure (1) with the Board for Correction of Naval Records (Board), seeking to have his naval records changed to reflect his disability retirement due to traumatic brain injury (TBI), mental health-related symptoms, and a back injury, made effective as of his date of discharge. In the

alternative, Petitioner asks to be re-instated in the U.S. Navy and immediately referred to the Disability Evaluation System (DES) for a comprehensive fitness assessment.

2. The Board, consisting of [redacted] reviewed Petitioner's allegations of error or injustice on 13 May 2026. The Board, pursuant to its regulations and on the basis of the available evidence of record, determined that the corrective action indicated below should be taken with respect to Petitioner's request. Documentary material considered by the Board consisted of Petitioner's application, all materials submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies. Because Petitioner claims to suffer from post-traumatic stress disorder (PTSD), the Board also considered the application of references (b) and (c) (hereinafter collectively referred to as the Clarifying Guidance) to Petitioner's request.

3. The Board determined that Petitioner's personal appearance, with or without counsel, would not materially add to its understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

4. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under law and regulations applicable to the Department of the Navy. Although Petitioner's application was not filed in a timely manner, the Board waived the statute of limitations and considered the case on its merits in the interest of justice.

b. A review of reference (e) reveals that on 8 December 1997, Petitioner commenced active duty in the U.S. Navy. See enclosure (2).

c. On 2 September 2000, Petitioner was involved in a motor vehicle accident. He received stitches for lacerations on his scalp and complained of pain, hypermobility, and muscle spasms in his lumbar spine. After evaluation, he was diagnosed with an L4-L5 transverse process fracture and recommended to pursue physical therapy. See enclosures (3), and (4).

d. On 28 February 2001, Petitioner was medically cleared for return to the flight deck. See enclosures (3), and (5).

e. In 2001 (the specific date is not reflected in the record), Petitioner aggravated his back injury while lifting an aircraft fuel pod. He presented to his local medical provider complaining of an acute increase in lower back pain, but without radiating symptoms. He further reported that at the moment of aggravation, his legs gave way, and he collapsed to the ground. See enclosures (3), and (6).

f. On 10 December 2001, Petitioner presented to his medical provider with complaints of persistent low back pain, stress, decreased attention span, and difficulty focusing ("As if my brain is going faster than I can function . . . I feel stupid"). He also reported having had ADHD

as a child. After evaluation, his provider noted "rule out" diagnoses of "anxiety [disorder] vs. ADHD." See enclosure (7).

g. On 25 March 2002, in connection with a follow-up consultation for persistent lower back-related symptoms, Petitioner's doctor noted that Petitioner's "neurosurgeon recommends . . . fusion surgery," and Petitioner "needs referral to [the] PEB for evaluation." At the time of consultation, Petitioner's active diagnosis was "HNP" (i.e., herniated nucleus pulposus, or "herniated disc") at the L4-L5 level with spondylolysis (i.e., vertebral fracture). See enclosure (8).

h. On 24 April 2002, Petitioner underwent a Separation Medical Examination. In the context of that examination, he self-reported a history of head injury, frequent trouble sleeping, depression, excessive worry, and loss of memory. See enclosure (9).

i. On 30 September 2002, Petitioner was discharged from the Navy due to "Reduction in Force" with an Honorable characterization of service. See enclosure (2).

j. Shortly after Petitioner's discharge, the Department of Veterans Affairs (VA) granted Petitioner service-connection for his low back injury (at a 20% disability rating) and depressive disorder (at an unknown disability rating), effective 1 October 2022 (i.e., the day after Petitioner's discharge). See enclosure (3).

k. On 8 April 2003, Petitioner presented to a VA medical facility for his first post-service mental health evaluation. After evaluation, the VA provider diagnosed him with "depressive disorder, not otherwise specified." See enclosure (10).

l. On 2 November 2022, the VA increased the disability rating associated with Petitioner's: (1) low back injury from 20% to 40% (following a January 2021 lumbar fusion with multiple lumbar disc replacements); and (2) mental health condition (recharacterized by that time as PTSD/TBI) to 70%. See enclosure (11).

m. To aid its consideration of Petitioner's case, the Board obtained an Advisory Opinion (AO) from its Physician Advisor. The AO is partially favorable to Petitioner's requests, finding that: (1) Petitioner's low back condition rendered him unfit for service at the time of his discharge; but (2) Petitioner's claimed TBI/mental health condition was not unfitting. The AO states, in part

> Petitioner's chronic low back condition did result in periods of debilitating back pain that limited his execution of duties required by his rate and assignment, led to repeated periods on light duty and purportedly Limited Duty (with pending referral to MEB), prevented him from participating in squadron training or deployments, participating in physical readiness training or periodic mandated Physical Fitness Testing, and resulted in reassignment from the flight line and carrier deck duties central to his rate and placement on less demanding administrative duties for over a year, which should have mandated referral to a MEB and consideration for referral to the PEB. This is further supported indirectly by VA granting service-connection for Degenerative Arthritis of the Spine (VA diagnostic Category 5242)

> at a 20% disability evaluation effective October 1, 2002 (day after discharge from service) based on clinical records and examination contemporary to his service . . . . Therefore, after review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner likely suffered from a duty limiting condition that should have been referred to the Physical Evaluation Board for adjudication for fitness for continued duty, specifically Chronic Low Back Pain due to L5 Transverse Process Fracture with Degenerative Disc Disease (Herniated Discs at L4-5 and L5-S1) and L5 Spondylolysis with Grade I Listhesis.
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> [Regarding his claim of unfitness for TBI/mental health-related symptoms,] Petitioner provided personal testimony, counsel's brief, and additional clinical evidence regarding the psychological and occupational impairments he contended he experienced as a result of his in-service motor-vehicle accident and resultant head and back injuries resulting in contended conditions of PTSD and TBI, as well as documented in-service and post-discharge low back pain condition in support of his petition for service disability and medical retirement.
>
> There are no available or provided in-service clinical records that provide objective clinical evidence of symptoms or behaviors indicative of PTSD or TBI conditions, or that Petitioner incurred duty limitations as a result of these conditions that should have led to a referral to the DES. There is no in-service evidence of mental health conditions that may be attributed to military service. There is no in-service evidence that mental health concerns contributed to his separation from service. There is post-service evidence of mental health conditions that may be attributed to military service.

See enclosure (3).

n. On 25 March 2026, the Council of Review Boards (CORB) reviewed the AO and concurred that at the time of his discharge, Petitioner would have been unfit for Chronic Lower Back Pain with Vertebral Fracture and Degenerative Disc Disease under VA Diagnostic Code 5235-5242 at a disability rating of 20%, permanent and stable, not combat-related (NCR), non-combat zone (NCZ). See enclosure (12).

o. In support of his request, Petitioner avers that his command neglected its responsibilities to facilitate his referral to the DES, as was recommended by his medical provider. He contends that he was therefore denied a fitness evaluation of his disabling conditions (including his lower back and TBI/mental health-related conditions) by the PEB, which would have found him unfit for service and placed him on the Permanent Disability Retired List (PDRL). He argues that the evidence of record proves his entitlement to placement on the PDRL at a 100% disability rating (but, in any event, no less than 70%), effective 30 September 2002. In the alternative, he argues that an appropriate remedy would be to reinstate him in the U.S. Navy and immediately refer him to the DES for a comprehensive fitness evaluation. See enclosure (1).

CONCLUSION

In its review of the entirety of Petitioner's application file as described above, the Board determined that there was an error in Petitioner's naval record with respect to his discharge through a reduction in force. Instead, Petitioner should have been separated with severance due to his lower back injury alone.

Regarding Petitioner's claim of unfitting TBI and/or an unfitting mental health condition, the Board found that Petitioner failed to meet his burden to prove, by a preponderance of the evidence, that his non-referral to the DES for TBI or a mental health condition was 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).

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.

In reaching its decision, the Board fully considered the Clarifying Guidance and the analytical framework outlined in reference (c), 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 this case, Petitioner was honorably discharged and did not request a change to that aspect of his record. Thus, the first step of the Vazirani framework does not apply to Petitioner's case.

The Board then turned to the second step of the Vazirani framework for its analysis of Petitioner's request for disability retirement. Here, the Board separately assessed Petitioner's claim of medical unfitness for continued service due to physical and mental health conditions 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 reaching its decision, the Board observed that in order to be found unfit through the DES, and thus to qualify for military disability benefits, a service member must be unable to reasonably perform the duties of their office, grade, rank or rating as a result of a qualifying disability that was incurred or aggravated during active military service. In evaluating whether a member can reasonably perform their duties, an evaluating Physical Evaluation Board (PEB) must consider deployability, common military tasks, physical fitness, and special qualifications. Alternatively, a member may be found unfit if: (1) their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; (2) the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or (3) the

member possesses two or more conditions that have the overall effect of causing unfitness even though each condition, standing alone, is not separately unfitting.

In its review of the entirety of the available evidence, the Board substantially concurred with the AO and found that Petitioner suffered from an unfitting lower back injury at the time of his discharge and thus should have been referred to the DES for a fitness evaluation and consideration of eligibility for disability separation or retirement. He suffered his initial injury (a lumbar fracture) due to a motor vehicle accident during his service. Following that initial injury, Petitioner aggravated the condition when lifting an aircraft fuel pod, resulting in immediate disabling symptoms. Petitioner's doctors' contemporaneous assessment was that Petitioner's vertebral fracture was unlikely to meaningfully improve without lumbar fusion surgery, which his doctors did not recommend due to his young age and the potentially disabling side effects of that surgery. Diagnostic imaging showed clear structural injuries and anatomical abnormalities in his lumbar spine. Petitioner's treating medical provider recommended that he be referred to the DES. And while Petitioner's command appears not to have acted on that medical recommendation for DES referral, the Board did not interpret their inaction as disagreement with the doctor's recommendation. Indeed, Petitioner's inability to return to full duty following his injury led to Petitioner being left behind when his unit deployed, which the Board construed as strong evidence that Petitioner's command did not believe him capable of reasonably performing his duties as an Aircraft Machinist's Mate. The Board therefore concluded that the preponderance of evidence showed that Petitioner should have been referred to the DES and ultimately found unfit by the PEB due to his lower back injury.

Regarding the appropriate disability rating for Petitioner's lower back injury, the Board, consistent with the AO (and the CORB's concurrence), observed that the VA contemporaneously rated Petitioner's lower back injury as 20% disabling, effective the day after his discharge. In his application to this Board, Petitioner contends that the VA "quickly" raised his disability rating to 40% after that initial 20% award, and thus the 40% rating is a more accurate reflection of his level of impairment at the time of his discharge. However, the record reflects that the VA did not increase Petitioner's lower back disability rating until 2022—more than 20 years after his discharge and, even then, only following Petitioner's lumbar fusion surgery in 2021. The Board therefore concurred with the AO and CORB, concluding that Petitioner's unfitting lower back injury should be assigned a disability rating of 20% under VA Diagnostic Code 5235-5242, consistent with the VA's contemporaneous rating.

Regarding Petitioner's argument that his claimed TBI and/or mental health conditions warranted referral to the DES, the Board considered that the VA granted him service-connection for "depressive disorder, not otherwise specified" effective immediately following his 30 September 2002 discharge. But the Board noted that VA service-connection of disabilities and associated disability ratings have different purposes than Integrated Disability Evaluation System fitness determinations. VA disability ratings reflect occupational impairment caused by all service-connected medical conditions, including medical conditions and degrees of impairment that may have only a limited impact on an individual's ability to perform their assigned military duties (e.g., well-controlled chronic illnesses, minor joint pain, less severe mental health conditions). Therefore, while Petitioner was granted service-connection for a mental health-related condition,

his VA rating alone is not conclusive evidence that he was unfit for duty at the time of his discharge.

The Board recognized that Petitioner received stitches for lacerations on his head and ear following his 2000 car accident. Petitioner contends that he suffered TBI in that accident but provides no medical records that substantiate that contention. When he followed up with medical providers just over a week later, he complained only of low back pain and made no mention of cognitive symptoms, headache, or other symptoms that might typically be associated with a concussion or TBI. The Board observed that the record contains little evidence that Petitioner sought treatment for, or was diagnosed in-service with, TBI or any mental health condition. A clinical note from 10 December 2001 notes "rule out" diagnoses of "anxiety [disorder] vs. ADHD" after Petitioner self-referred for medical evaluation with complaints of stress and difficulty focusing. And Petitioner's separation physical (dated 24 April 2002) includes a self-reported history of head injury, frequent trouble sleeping, depression or excessive worry, loss of memory or amnesia, and nervous trouble. But apart from these two documents, the record does not reflect any in-service symptoms of, or treatment for, TBI, PTSD, or any other mental health-related condition. The Board's medical advisor, as reflected in the AO, also reviewed Petitioner's service and clinical treatment records and found "no available or provided in-service clinical records that provide objective clinical evidence of symptoms or behaviors indicative of PTSD or TBI conditions, or that Petitioner incurred duty limitations as a result of these conditions that should have led to a referral to the DES." Finally, because Petitioner was never referred into the DES, the presumption of regularity compels the Board to conclude that none of his in-service medical providers assessed that any TBI- or mental health-related condition met the criteria for referral and fitness evaluation.

In sum, following its review of the evidence, the Board found that Petitioner failed to meet his burden to prove, by a preponderance of the evidence, that his non-referral to the DES for TBI or a mental health condition was erroneous.

Then, the Board turned its attention to whether any of the Navy's challenged actions in this case were unjust, despite being appropriate under then-applicable standards and procedures. Following its deliberations, the Board found that Petitioner failed to show, by a preponderance of the evidence, that the unique circumstances of his case were such that a formally correct action nevertheless resulted in injustice.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Correct Petitioner's record by separating Petitioner with severance as of his date of discharge, on account of the following unfitting condition:

Condition 1:	Chronic Lower Back pain with Vertebral Fracture and Degenerative Disc Disease (NCR, NCZ)
VA Diagnostic Code:	5235-5242

Disability Rating: 20%

Navy Personnel Command will issue a DD Form 215 or a new DD Form 214, whichever one they deem appropriate, that reflects the Board's corrective action if applicable.

Defense Finance and Accounting Service will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and allowances.

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further changes be made to Petitioner's naval record.

5. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

6. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of Reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

5/28/2026

[redacted]