



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

██████████
Docket No. 5648-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 May 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"). The Board also considered the 16 March 2026 advisory opinion (AO) furnished by the Board's physician advisor. The AO was provided to you on 23 March 2026, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

A review of your record shows that on 8 June 1998, you commenced active-duty service with the U.S. Marine Corps.

Regarding your disciplinary record, on or about 17 May 2001, after returning from a deployment to ██████████ and the ██████████, you tested positive for marijuana use. In an interview with your commanding officer (CO) following your positive urinalysis, you "blamed [your] drug use on the fact that [you] were so intoxicated with alcohol that [you] barely remember[] using marijuana." Your CO deemed your drug use to "violate [your] obligations to uphold Marine Corps regulations" and, considering your then recent promotion to Corporal, "to run counter to the type of leadership the Marine Corps needs in its NCO ranks."

On 2 July 2001, you were notified of the commencement of administrative separation (ADSEP) proceedings against you. On 6 July 2001, after consulting with counsel, you waived an ADSEP board and chose not to submit a statement in rebuttal to your proposed ADSEP. On 12 July 2001, your CO recommended your ADSEP for misconduct with an “Under Other Than Honorable Conditions” (OTH) characterization of service, which recommendation was approved by the Commanding General (CG), ██████████ (██████████), on 21 August 2001. In connection with that action, CG ██████████ also requested that you be permanently barred from ██████████.

Regarding your medical record, you provided for the Board’s review clinical notes showing that you were being treated for post-traumatic stress disorder (PTSD), beginning, at the latest, in 2022. On 24 April 2025, your primary care provider drafted a letter in support of your claim to the Department of Veterans Affairs (VA) for disability benefits for PTSD. In that letter, your doctor opined that your “PTSD is at least as likely as not (50% or greater probability) caused by or a result of [traumatic experiences during your military service].” On 1 May 2025, you were evaluated by a VA examiner in the context of a Compensation and Pension Examination. The examiner diagnosed you with PTSD and assessed your level of disability as “occupational and social impairment with reduced reliability and productivity” (i.e., consistent with a disability rating of 50%). However, your VA records reflect that the VA rated you as 70% disabled due to symptoms of PTSD, effective 27 January 2025.

The record does not reflect that you complained of, or received any treatment for, mental health-related symptoms during your service. You contend this is so because you did not understand at the time that your behaviors and emotions—which you describe as feeling emotionally numb, distant from your peers, reckless and irresponsible behavior, and disregard for authority and the consequences of your actions—were signs of undiagnosed PTSD arising from traumatic experiences during your deployment. Among the traumatic experiences that you believe caused your PTSD, you describe: (1) your resource distribution point being overrun by desperate civilians in East Timor; (2) your convoy being subjected to small arms fire in Kuwait; and (3) witnessing “bombed-out houses, body parts, and the smell of burnt flesh” in connection with your unit’s support actions following the bombing of USS Cole.

In your application to this Board, you requested that your naval records be changed to reflect: (1) your disability retirement due to PTSD; and (2) an upgrade of your OTH characterization of service. You contend that your ADSEP due to misconduct was unjust, as your marijuana use was intended to self-medicate symptoms of PTSD. You further contend that you were never adequately screened for mental health conditions prior to your discharge, and you were discouraged from seeking treatment for substance use. You contend that you have now been diagnosed with PTSD, including by the VA, and are in treatment, and your doctor opines that your condition is connected to your military service. You therefore argue that “a medical retirement determination would have been appropriate had these conditions been properly identified.”

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 Marine Corps' 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.

Thus, the Board began its analysis by examining whether a mental health condition excused or mitigated your discharge.

Regarding your discharge, the Board observed that on 8 November 2001, you were ADSEPeD for misconduct and given an OTH characterization of service under the Marine Corps' zero-tolerance policy regarding drug abuse, arising from a urinalysis that tested positive for delta-THC (marijuana). The fact of your marijuana use is not in dispute—you admitted your use of marijuana to your CO. And your ADSEP and characterization of service were approved by an appropriate separation authority. With this factual background, the Board noted that it is required to evaluate whether a mental health condition sufficiently excused or mitigated those actions as to undermine the basis for your ADSEP or your characterization of service. As an initial matter, even if the Board were to assume, as a general matter, that you experienced some unrecognized symptoms of PTSD during your service, you contemporaneously admitted that you used marijuana not to alleviate those symptoms, but because you were already intoxicated after heavy drinking and used marijuana in that already-impaired state. Prior to your ADSEP, you had the opportunity to consult with counsel and could have argued that mental health concerns mitigated your misconduct, but you chose not to contest your discharge through an ADSEP board or to make a statement in your defense. You contend that PTSD caused you to act recklessly and with severe disregard for authority, but your performance marks are uniformly positive (i.e., 4.2 or greater), even during the periods directly corresponding with your drug use. These positive marks suggest that any PTSD symptoms you may have been experiencing did not meaningfully affect your ability to conduct yourself professionally on a day-to-day basis or over the performance period. The Board further notes that an Advisory Opinion (AO) prepared by the Board's physician advisor/psychiatrist opines that the record does not support your contention that your drug use was mitigated by in-service mental health-related symptoms. The AO notes that you did not report symptoms of PTSD until 2022—more than 20 years after your discharge—and the temporal distance between your misconduct and your report of mental health-related symptoms undermines your contention that a meaningful nexus exists between your drug use and your in-service state of mental health. Finally, in accordance with the Kurta

Memo, the Board noted that premeditated misconduct, including drug abuse, is not generally excused by mental health 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 your ADSEP for misconduct or your OTH characterization of service was erroneous. The Board thus found no error in the Marine Corps' actions.

The Board then turned to the second step of the Vazirani framework for its analysis of your request for disability separation or retirement. Here, the Board separately assessed your claim of medical unfitness for continued service due to your physical and mental health conditions as a discreet issue, without applying liberal consideration to the unfitness claim.

The Board carefully reviewed your petition and its supporting materials but disagreed with your rationale for relief. In reaching its decision, the Board noted 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.

The Board considered that, no later than 27 January 2025, the VA rated you as 70% disabled due to service-connected PTSD. But the Board noted that VA disability ratings have a different purpose 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). Further, because VA disability ratings reflect your level of impairment at the time of evaluation, and the rating you provided shows an effective date more than 20 years after your discharge, the Board cannot assess, on the basis of that rating alone, whether your current VA ratings bear any relation to your level of impairment at the time of your discharge in 2001.

Critically, the Board noted that your case file contained no in-service mental health records at all, and your first report of PTSD symptoms occurred in 2022—decades after your discharge. The Board was thus left entirely without contemporaneous medical evidence with which to assess your psychological fitness for duty while in service, and, in turn, your claims of error or injustice. The AO, consistent with the Board's own assessment, found no evidence of an unfitting mental health condition during your service. Finally, because you were never referred into the DES for a mental health-related condition, the presumption of regularity compels the

Board to conclude that none of your in-service medical providers assessed that any then-existent psychiatric condition met the criteria for referral and fitness evaluation.

In the absence of medical documentation regarding potentially unfitting symptoms of PTSD, the Board looked to other indicators of performance to ascertain whether other materials in the record might evidence your inability to reasonably perform your military duties (i.e., your unfitness) due to that condition. However, as mentioned above, your performance marks during service—even during the periods influenced by your drug use—are uniformly positive, which the Board found to be compelling evidence that PTSD did not prevent you from reasonably performing your military duties, either on a day-to-day basis or over the performance period. Thus, while you may have subjectively experienced mental health-related symptoms, the evidence does not show that PTSD prevented you from reasonably performing your required occupational tasks. The Board noted that the standards for fitness are not individualized, and a finding of unfitness is not warranted unless a medical condition renders a service member unable to perform at or above the minimum required standard. Your record simply does not reflect that you fell below that line due to PTSD as of your date of discharge. Upon considering all of the above, the Board concluded that the evidence failed to show that a mental health condition rendered you unfit for service at the time of your discharge.

Following its review of the evidence, the Board found that you failed to meet your burden to prove, by a preponderance of the evidence, that the Marine Corps' actions at the time of your discharge were erroneous. Then, having found the Marine Corps' actions in this case not to be erroneous, the Board turned its attention to whether those actions were unjust, despite being appropriate under then-applicable standards and procedures. Following its deliberations, the Board 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.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

5/22/2026

