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

[redacted]
Docket No. 5877-25
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. 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) 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"). The Board also considered the 26 March 2026 advisory opinion (AO) from a board certified psychiatrist as well as your response in rebuttal to the AO.

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

A review of your naval records revealed that you entered active duty in the Marine Corps on 10 August 2007 as a judge advocate. Notably, you received a fitness report for the period 22 August 2013 to 30 January 2014, which covered a period you were deployed to Afghanistan and was adverse in nature. Your comparative assessment was documented as "Unsatisfactory" and you had adverse scores in Mission Accomplishment (Performance), Individual Character (Courage and Initiative), and Intellect and Wisdom (Decision Making) with accompanying negative comments in the justification sections of each category. You contested the contested

the adverse fitness report with extensive rebuttal to the adverse marks and overall findings of the Reporting Senior and Reviewing Officer. The fitness report was reviewed by the General/Senior Officer who concurred with the adverse marks and comments stating they were properly supported.

On 14 February 2014, you underwent a Post-Deployment Health Assessment (PDHA). During your PDHA, you denied any problems or concerns and the examination was documented as Normal. You were released without limitations or referrals. On 19 May 2014, you underwent a Post-Deployment Health Re-Assessment (PDHRA). During the PDHRA, you reported your overall feeling as "Very Good." It further noted that a review of systems was negative; Screening Assessments for Depression, Substance Abuse, and PTSD were negative. You denied any concerns or difficulties with major life stressors, exposure to combat stressors or assault, danger of being killed, encountered bodies or saw people killed or wounded, was in direct combat or discharged weapon. You denied current exposure to stressors or getting treatment/ professional help for same. You further denied you were worried about your health, wanted to schedule an appointment with a health care provider for any health concerns, or any chaplain or community support counselor for assistance for stress, emotional, alcohol, family, or relationship concerns. You were released without limitations without indication for further referrals. You completed your required service on 30 September 2014 and you were assigned an Honorable characterization of service.

You filed a prior case with this Board, which was considered on 15 November 2018. In its letter denying your request, the Board addressed the musculoskeletal claims that you raised, and explained:

> The Board carefully considered your arguments that you were unfit for continued naval service at the time of your discharge from the Marine Corps and should be placed on the disability retirement list. You assert that you injured your left knee, back, and neck in July 2014 that prevented you from performing the duties as a Marine Corps Judge Advocate. Unfortunately, the Board disagreed with your rationale for relief. First, the Board found insufficient evidence that your disability conditions prevented you from performing the duties of your office, grade, rank or rating. While the Board acknowledges that you suffered an injury to your left shoulder in July 2014, they also noted in your medical records that you were released without limitations after each instance of treatment with no evidence you were not able to perform the duties as a Judge Advocate. Similarly, the Board found no medical evidence to support a finding of unfitness for your back and neck disability conditions. Further supporting the Board's determination was your post-discharge employment as an attorney with the IRS and your current employment as an Administrative Law Judge. In the Board's opinion, both of these occupations are similar to the duties performed by a Marine Corps Judge Advocate and persuaded the Board that it lacked sufficient evidence to support a finding that you were unable to perform the duties of your office, grade, rank or rating at the time of your release from active duty. Second, the Board considered the VA disability ratings issued post-discharge. However, they felt these ratings were not persuasive since eligibility for compensation and pension disability ratings by the VA is tied

to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Accordingly, the Board concluded there was insufficient evidence of error or injustice to warrant a change to your record.

In your current application, you requested to be referred to a Medical Evaluation Board (MEB), or in the alternative, constructive retirement as of 2014 based on an undiagnosed service-connected medical condition that should have triggered evaluation and separation through appropriate channels. You further requested that, if the Board does not find retrospective retirement warranted, then you requested consideration of constructive service credit through the present date, with referral to a MEB now. Next, you requested the removal of the adverse fitness report issued following your deployment in early 2014 as well as removal of subsequent fitness reports, as they were materially influenced by the contested report.

In support of your request for disability retirement and associated relief, you averred that, in late 2013, you deployed to Afghanistan as a Marine Corps officer assigned to a staff judge advocate billet supporting a general officer command. You argued that, while your formal role was advisory in nature, the mission included direct interaction with Afghan prosecutors and civilians and coordination of detainee transfer, which placed you in high pressure situations outside the normal scope of your billet. You explained that, during this period, you began to experience escalating psychological distress, which ultimately resulted in a breakdown and an adverse fitness report. You further argued that you were only given eight days to respond to the adverse fitness report and you were not awarded nonjudicial punishment or required to show cause before a board of inquiry. Rather, you argue, you were separated later that year without have ever received a mental health evaluation or an opportunity to recover or understand what had occurred. You explained that the symptoms you experienced in Afghanistan, which were disorientation, impaired judgment, difficulty regulating emotion, and social withdrawal, are now known to be hallmarks of PTSD, and that these behaviors were not subtle or ambiguous. You argued that the adverse fitness report alone reflected enough concern and dysfunction that it should have triggered a mental health evaluation. You included an email message from a Marine major, in which she stated that, "I imagine that folks will want to talk to you before making any decisions about where you will be heading next. I think it is good to push forward. You may also want to reflect on what happened over the last four to five weeks and take stock of that. I am sure folks will have questions and your reflections may better help you answer them. It is not always the right answer to say that you don't know what happened or why you behaved in the manner that you did." You argued that this email is a critical piece of contemporaneous documentation that reinforces your central argument that your command was aware of behavioral health red flags and proceeded with adverse administrative action without referral for a medical evaluation, contrary to applicable policy and common practice.

With respect to your fitness report, you argued that it should be removed for the following reasons: (1) it was issued while you were still in transit home from a combat zone, which left you no realistic opportunity to reflect, seek care, or prepare a response; (2) written counseling preceded the report, which your believe violates the spirit, if not the letter, of fairness in the evaluation system; (3) the fitness report was not consistent with the actions that followed. You explained that if the conduct described was truly as severe as the language suggests, one would

expect nonjudicial punishment, a formal investigation, or a medical referral. None of those actions were initiated; and (4) the language used in the report, which you describe as noting emotional volatility, impaired judgment, and other behavioral issues, tracks almost exactly with the diagnostic criteria for PTSD, and that a qualified mental health professional, such as a forensic psychologist reviewing the fitness report in isolation could likely identify it as describing a recognizable pattern of trauma-related symptoms. Finally, you argue, in retrospect, the report reflects a pattern of symptoms more commonly associated with a clinical profile than with professional misconduct. In further support of your request, you provided a rating decision from the Department of Veterans Affairs (VA) dated 1 May 2025 granting you service connection for PTSD with an evaluation of 70 percent effective 24 November 2024. You also provided supplemental written materials, all of which the Board reviewed.

In order to assist the Board in reviewing your application, the Board obtained the AO from a board certified psychiatrist, which was considered unfavorable to your request. According to the AO, a review of your in-service records did not reveal evidence of psychological symptoms or behavioral changes indicative of a mental health condition, that you sought evaluation or treatment for psychological symptoms indicative of a mental health condition, or that you received a diagnosis of a mental health condition. Further, according to the AO, a review of available VA records revealed VA granted service-connection and disability benefits for PTSD at a 70% disability evaluation effective November 24, 2024. However, the available VA records indicated a sole clinical entry from 30 December 2015 in which you contacted the VA Suicide Hotline and you were contacted by the local hotline representative to whom he inquired how to access counseling services for "increased stress" to include with relationships. The AO noted that there were no other VA clinical records of evaluations or treatment for a mental health condition. The AO further noted that, while you described psychological and occupational impairments you contended you experienced during your naval service, you provided no additional clinical evidence in support of your petition. The AO set forth the following rationale in reaching the opinion:

> 5. After review of all available objective clinical and non-clinical evidence, in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of his completion of obligated military service, he was unfit for continued military service and should have been referred to the Disability Evaluation System for adjudication of fitness for continued service and consideration for medical retirement. Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the military responsibilities of his occupational specialty and rank up to his 20130822-20140130 adverse FITREP from his [redacted] deployment. However, there was no objective clinical evidence that the circumstances of his adverse FITREP were due to the presence of a mental health condition. Throughout his military service, Petitioner had numerous interactions with medical personnel through medical evaluations and provision of treatment by operational medical staffs, primary care and specialty care providers at the military treatment facility, as well as interactions with his chain of command. There were no issues raised throughout the course of Petitioner's medical evaluations and treatment or administrative processes that there were any concerns by those

involved that Petitioner exhibited signs or symptoms of a mental health condition that required referral to a mental health practitioner for evaluation.

The mere presence of psychological symptoms or a diagnosis is not synonymous with a disability. In order to find that a member is Unfit for continued naval service, it must be established that the medical disease or condition underlying the diagnosis actually interferes significantly with the member's ability to carry out the duties of his or her office, grade, rank, or rating. (SECNAVINST 1850.4E para 1004 c(2)(a)).

Petitioner underwent medical and mental health assessments following his Afghanistan deployment to include a Post-Deployment Health Assessment and a Post-Deployment Health Re-Assessment without endorsement of mental health issues arising during his deployment or post-deployment. Additionally, Petitioner was seen by military health providers for other medical conditions following his deployment (primarily sports/musculoskeletal related occurrences) with no clinical evidence that any of his medical providers considered Petitioner suffered from a medical or mental health duty-limiting condition referable to a medical evaluation board (MEB) review for possible referral to the Physical Evaluation Board (PEB) for adjudication of fitness for continued service for a medical or mental health condition.

The mere presence of medical or mental health symptoms, 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).

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

You were provided a copy of the AO and you provided an undated response in rebuttal to the AO, which the Board received on 5 May 2026. In your rebuttal, you argued that your pre-deployment record reflects sustained, high-level performance over approximately seven years, and it established a clear baseline for evaluating the events at issue. In contrast, however, according to your argument, your record reflects a sudden and pronounced deterioration in functioning during a discrete period following arrival in Afghanistan. During that period, you argue, you were unable to perform duties requiring independent legal judgment, your behavior and interactions changed markedly, you were removed from your billet and returned from deployment early, and you were not returned to full duties thereafter. You assert that this abrupt change was inconsistent with ordinary performance deficiencies and was consistent with the onset of a stress-related mental health condition.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and 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 separated 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 actually excused or mitigated your discharge. On this point, the Board observed that you were separated at the completion of your required service and you were assigned an Honorable characterization of service. Therefore, the Board concluded there was no discharge relief that was appropriate.

The Board then turned to the next step of the Vazirani analysis, namely, to separately assess 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 reviewing evidence of errors or injustice with respect to claims for service disability retirements, 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 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 its review of your petition and all available documentation, the Board observed that you provided evidence that was insufficient to overcome the presumption of regularity that you were fit for separation at the completion of your required service. At the outset, the Board substantially concurred with the AO, which it found to rational and based on substantial evidence. The Board observed that the AO, by a board certified psychiatrist, was fulsome and was based on a thorough review of the available medical evidence as well as all of your arguments. Further, the Board noted on its own review of the available medical evidence, such evidence did not reflect that, while you were in service, you had a potentially unfitting condition that required referral to the DES. In fact, as set forth in the AO, despite your numerous interactions with medical personnel throughout your service, there were no issues raised throughout the course of your medical evaluations and treatment that you exhibited signs or symptoms of a mental health condition that required referral to a mental health practitioner for

evaluation. Further, the Board noted that you completed a Post-Deployment Health Assessment and a Post-Deployment Health Re-Assessment, and neither of those signaled any concern that you should have been referred for review by a MEB. In addition, as described by the AO, the Board noted that you did not provide VA clinical records of evaluations or treatment for a mental health condition, nor did you provide any clinical evidence in support of your petition.

The Board considered all of your arguments, and in particular, your argument that prior to your deployment you had a history of excellent performance, and your performance was noted to have markedly declined as a result of the incident described in your adverse fitness report. On this point, the Board considered that you provided insufficient evidence to overcome the presumption of regularity. In other words, the fitness report contained the impressions of your leadership team based on contemporaneous observations of your performance, and specifically the particular incident at issue that was recounted therein. You were given the opportunity to provide a rebuttal. You availed yourself of the rebuttal, which was several pages long. Notably, the rebuttal did not contain any evidence or argument describing that you were suffering from a mental health concern. Your lengthy rebuttal focused on a variety of matters, such as the fact that you were "merely asking questions" to ensure you were complying with applicable laws, among other arguments. In summary, the Board considered the entirety of the adverse fitness report and your rebuttal thereto and it was unable to find any inference from the report that you were suffering from a mental health condition.

Similarly, the Board considered the email message from the Marine major that you provided, in which she advised you to "reflect on what happened over the last four to five weeks" and that, when asked about what happened, stating "I don't know" is "not always the right answer." You argued this was a "clear indicator that the command perceived my conduct as abnormal, acknowledged it had occurred over a discrete and recent period, and were discussing it internally." The Board considered that to accept your argument here would require a strained inference. The more obvious takeaway from the major's email is that she was providing career advice to a more junior Marine officer who had just made a serious professional misstep and her advice appeared to be that you should take responsibility for your actions and that you should come up with a palatable explanation for your perceived failures. In any case, it is not the job of this Board to interpret email messages from more than a decade ago. Rather, the job of this Board is to determine whether such documentation evidences that your command, or the Marine Corps more generally, made an error in allowing you to complete your required service vice sending you to a MEB for PTSD or another mental health condition, despite there being no medical records describing a history of mental health concerns and despite your two post-deployment assessments that did not flag any mental health concerns. In light of all of this information, the Board was unable to find an error or injustice in your naval record.

Concerning your request to have several fitness reports removed from your record, including the adverse fitness report, the Board determined that you provided insufficient evidence in support of your request. Upon its review of these fitness reports, they appeared to be prepared in accordance with applicable Marine Corps policy based on contemporaneous observations by individuals assigned to positions of authority and whose job duties included providing input into your fitness reports. You were availed of all opportunities to rebut any adverse information, and you did avail yourself of that right by providing a lengthy written rebuttal. The Board observed

that you did not provide sufficient information demonstrating that the fitness reports were in error. The Board was further unable to find that those fitness reports resulted in an injustice.

In conclusion, 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,

6/3/2026

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