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

[redacted]
Docket No. 6077-25
Ref: Signature Date

[redacted]

Dear [redacted]

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 20 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 30 March 2026 advisory opinion (AO) furnished by the Board's physician advisor. The AO was provided to you on 2 April 2026, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

A review of your record shows that you commenced active-duty service with the U.S. Marine Corps on 7 November 1990.

Regarding your disciplinary record, on 11 June 1991, you submitted a urine specimen for testing in connection with an Overseas Screening. On 24 June 1991, your command was notified that your specimen had tested positive for cocaine.

Between 15 September 1991 and 4 October 1991, you wrote nine "insufficient funds" personal checks to the military exchange in [redacted], [redacted] and, on 17 December 1991, you received non-judicial punishment (NJP) for the offense under Uniform Code of Military Justice (UCMJ) Article 134 (failing to pay debts).

On 24 October 1991, you failed to timely report to your assigned place of duty and, on 1 November 1991, you received a counseling entry and NJP for the offense under UCMJ Article 86 (unauthorized absence).

On 19 November 1991, you were notified that your command was initiating administrative separation (ADSEP) proceedings against you for misconduct "due to drug abuse evidenced by [your] recent positive urinalysis as well as [your] preservice admission of drug use." On 2 December 1991, your commanding officer recommended your ADSEP for misconduct with a characterization of service of "Under Other Than Honorable Conditions" (OTH).

Between 4 December 1991 and 17 December 1991, you stole three videocassettes from the [redacted] Audio Video Shop and, on 30 December 1991, you received NJP for the offense under UCMJ Article 121 (larceny and wrongful appropriation).

On 26 December 1991, after consulting with counsel, you waived an ADSEP board (regarding your ADSEP recommendation for drug use). In early January 1992, the Staff Judge Advocate and Commanding [redacted] approved your ADSEP and, on 24 January 2012, you were ADSEPed for misconduct with an OTH characterization of service.

Regarding your medical record, beginning early in your service, you underwent several evaluations (15 encounters) for foot and back-related complaints. You were evaluated by specialists in podiatry and neurology, who described you as having a life-long "unusual" or "dissymmetric" gait with poor intrinsic balance but otherwise did not diagnose you with any formal condition. A single 22 March 1991 podiatry note mentions your consideration for referral to a medical board due to a pre-existing condition, but no doctor in fact made such a referral. Instead, you were placed on brief periods of light duty in response to acute complaints and then returned to full duty. On 28 March 1991, you underwent a psychiatric evaluation to determine whether your "unusual gait" might have a psychiatric cause. You were determined not to have an active mental illness, but your clinician noted alcohol and nicotine dependence and a "long pattern of social maladjustment [and] antisocial behavior . . ."

On 11 June 1991, in the context of your Overseas Screening (i.e., the same screening in which you submitted a urine sample that later tested positive for cocaine), you reported being in good health, with no physical or mental health-related complaints.

On 15 November 1991, you underwent a medical evaluation in connection with your positive drug screen for cocaine. Following that evaluation, you were diagnosed with poly-substance abuse (cocaine and alcohol) but no other mental health conditions. And in connection with your ADSEP recommendation, you were recommended to attend Level II treatment for substance abuse at a Department of Veterans Affairs (VA) treatment facility following your discharge.

In support of your application, you provided for the Board's review non-clinical records showing your work history, lack of criminal records, recommendation for approval as a foster parent, and personal photos.

To aid its consideration of your case, the Board obtained the AO from its physician advisor. The AO is unfavorable to your application. The AO states, in part:

> 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 administrative separation from military service, he was unfit for continued military service and should have been referred to the Disability Evaluation System [(DES)] for adjudication of fitness for continued service and consideration for medical retirement. Additionally, the objective clinical evidence did not support Petitioner's contention of an in-service mental health condition that mitigated his misconduct behavior.
>
> Review of the available objective clinical and non-clinical evidence documented Petitioner adequately executed the range of responsibilities of his rate and rank up to his [13 June 1991] performance evaluation with average Pro/Con marks of 4.0/4.4 in grade and 4.0/4.0 in service. Following three NJPs and administrative processing for administrative separation for Drug Abuse Misconduct, his [15 Jan 1992] performance evaluation documented Pro/Con marks of 2.0/2.5 and his final 920121 average was documented as 3.6/3.6.
>
> 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 additional referral to a mental health practitioner for evaluation, other than his referral from Neurology in the course of his diagnostic evaluation for "unusual gait" and referral for substance abuse evaluation following his positive urinalysis for cocaine. Except for short periods of light duty during evaluations for his back and foot symptoms, Petitioner continued to successfully execute the required duties of his military assignments without significant loss of full duty status.
>
> There was no clinical evidence that any of his medical, mental health, or substance abuse providers considered his conditions duty-limiting for continued service or were considered referrable to a medical evaluation board (MEB) review for possible referral to the Physical Evaluation Board (PEB) for adjudication of fitness for continued service.
>
> Though Petitioner and counsel contended Petitioner had been recommended for medical discharge at initial recruit, advanced infantry, and/or specialty school

> training due to his back or foot complaints and was diagnosed with depression and [post-traumatic stress disorder] (PTSD) in [redacted], there was no evidence in the available in-service clinical and personnel records documenting these contentions.

In your application to this Board, you requested that your naval records be changed to reflect: (1) your disability retirement due to PTSD, chronic back pain, and foot problems; (2) a narrative reason and separation code consistent with disability retirement; (3) a re-entry code of RE-1; and (4) an upgrade of your OTH characterization of service to "Honorable." You contend that your ADSEP due to misconduct was unjust, as you do not believe that you used cocaine. To the extent that you did abuse intoxicating substances, you contend that you did so to self-medicate symptoms of foot and back pain, along with psychological symptoms caused by the hazing and ridicule of your fellow Marines due to your physical limitations. You contend that Department of Defense guidance regarding liberal consideration and clemency warrant an upgrade to your characterization of service. And you contend that PTSD, foot pain, and back pain rendered you unable to reasonably perform your military duties prior to your discharge and thus, instead of ADSEP, you should have been referred to the DES for a fitness assessment and ultimately retired due to disability.

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 24 January 1992, 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 cocaine (along with your admission of pre-service drug use). Although you had the right to contest the

charges and proposed characterization of service (OTH) arising from that positive drug screening at an ADSEP board, and you contend that you did not use cocaine, you chose to waive your right to such a board. 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.

First, regarding your contention that you did not, and do not, believe that you used cocaine, you have offered no evidence to undermine the validity of your urinalysis, and you chose not to contest its validity when offered the opportunity to do so in 1991. Second, to the extent you claim that you began abusing alcohol to alleviate physical and psychological symptoms, the Board noted that you were not ADSEPed due to your alcohol use. Thus, any contention that physical or mental health conditions caused you to abuse alcohol is not relevant to your application for upgrade of a discharge motivated by a separate instance of misconduct (i.e., cocaine use). Third, regarding your contention that any substance abuse you may have engaged in was mitigated by symptoms of pain, depression, and unrecognized PTSD, the Board noted that your positive urinalysis occurred in the context of (i.e., on the same day as) a medical evaluation to determine your qualification for overseas service. At that time, you reported that you were "in good health and not taking any current medications" and reported no medical or mental health complaints. Thus, your contemporaneous reporting of your own state of physical and mental health undermines your current (35 years later) contention that medical conditions rendered you sufficiently impaired as to excuse misconduct (drug use) against which the Marine Corps has consistently maintained a policy of "zero-tolerance." In support of your claim that disabling medical conditions mitigated your misconduct, you contend that you were diagnosed with PTSD while stationed in [redacted]. However, your medical record does not reflect your in-service diagnosis with PTSD or any other mental health-related condition (apart from poly-substance abuse and a potential history of personality-type disorders). Further, you did not provide any evidence that the VA or a civilian clinician has diagnosed you post-service with PTSD or, in the case of the VA, found such a condition to be service-connected. The Board further notes that the 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. Finally, in accordance with the Kurta Memo, the Board noted that premeditated misconduct, including drug abuse, is not generally excused by mental health conditions.

Regarding your request for clemency on the basis of your post-discharge record of professional success, positive family life, and no history of involvement with law enforcement, the Board observed that your record unfortunately reflects multiple additional incidents of misconduct, including theft, at a time when you were already under scrutiny for cocaine use. The Board thus concluded that your OTH characterization of service is an appropriate reflection of your military service, notwithstanding your positive contributions outside of the Marine Corps following your discharge.

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 or unjust. The Board thus found no error or injustice 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 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.

Critically, the Board noted that your case file contained no evidence that you were formally diagnosed in-service with any physical or mental health conditions (apart from substance abuse and a potential history of personality-type disorders). You were evaluated for an "unusual gait," which you described as life-long, and you underwent psychiatric evaluation to determine if your gait might have a psychological origin. But your physical complaints were consistently treated conservatively, and, as stated in the AO, "[e]xcept for short periods of light duty during evaluations for back and foot symptoms, [you] continued to successfully execute the required duties of [your] military assignments without significant loss of full-duty status." And because no medical provider referred you to a Medical Evaluation Board or the DES, the presumption of regularity compels the Board to find that none of your in-service providers assessed that any of your physical or mental health-related conditions warranted such a referral or a fitness assessment by the PEB.

In the absence of medical documentation substantiating your unfitness, the Board looked to non-medical 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 medical conditions. However, you successfully completed Recruit Training and Marine Combat Training—two arduous courses—and your performance marks during service (apart from those prepared for periods during which you received NJPs) are uniformly positive, which the Board found to be compelling evidence that your medical conditions 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 foot and back pain and mental health-related symptoms, the evidence does not show that those symptoms 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 disabling medical conditions as of your date of discharge. Upon considering all of the above, the Board

concluded that the evidence failed to show that physical and/or mental health conditions 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.

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,

6/5/2026

[redacted]