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

[redacted]
Docket No. 6145-25
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 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 15 April 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").

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 20 May 2002. Just over a year later, you presented to your primary care doctor with complaints of three months of back pain, but without meaningful functional limitations. Your medical record does not reflect any follow-up care beyond that single consultation.

In April 2004, you were assigned to the Marine Corps Body Composition Program (BCP) and the Remedial Physical Conditioning Program (RPCP) for failure to maintain body composition standards. As context for your BCP assignment, your record reflects that on 8 May 2001, you reported to your first Military Entrance Processing Station (MEPS) physical examination weighing 235 pounds (two pounds in excess of your maximum allowable weight under then-applicable U.S. Marine Corps policy). You reported weighing 260 pounds in high school and

described yourself as "always heavy." A year after your first MEPS evaluation, you ultimately enlisted in the Marine Corps at a weight of 215 pounds.

You failed to return to standards within your six-month BCP assignment, so you were assigned to a second six-month term. In connection with your assignment to the BCP, a [redacted] twice (on 21 January 2005 and 26 May 2005) evaluated you to determine whether your failure to maintain a qualifying weight was due to an underlying medical condition. Both times, the Flight Surgeon determined that there was no medical cause for your BCP failure. Due to the increased running during the RPCP, you complained of knee and lower leg pain. In April 2004, you described a recent onset of knee pain, worsened by running. Your weight at the time was recorded as 245 pounds. In December 2004, you were diagnosed with bilateral patellofemoral pain syndrome (PFPS), but without structural injury. In October 2005 you were diagnosed with bilateral quadriceps, hamstring, and heel cord strains due, in your provider's assessment, to worn running shoes. Again, your providers did not identify any structural injury and recommended only conservative treatment.

In December 2005, in the context of a nutrition counseling session, you reported consuming 36 beers per week, 48 ounces per day of sugared soda, energy drinks, and extra sweet coffee. On 31 January 2006, you were notified that you were to be recommended for administrative separation (ADSEP) due to failure to maintain body composition standards. The notification explicitly stated that you had "no medical problems" resulting in your BCP failure.

In March 2006, while awaiting ADSEP processing, you fell on your left knee and suffered a contusion (i.e., bruise). At the time, you were measured to have an unrestricted functional range of motion, and you were treated conservatively with over-the-counter anti-inflammatory medication. One month later, in the context of an outpatient biopsychosocial screening, you reported that you did not regularly suffer from pain.

Ultimately, on 8 May 2006, your ADSEP was approved by the [redacted] On 28 May 2006, you were separated with a General (Under Honorable Conditions) discharge for weight control failure.

In 2017, the Department of Veterans Affairs (VA) granted you service-connection for bilateral sciatica (at a 20% disability rating), right knee PFPS (10%), right leg radiculopathy (10%), left knee PFPS (10%), and left leg radiculopathy (10%), effective 23 September 2016. At that time, the VA denied service-connection for any mental health condition, finding that your symptoms were the result of substance (alcohol) abuse and willful misconduct.

On 10 March 2022, you obtained a psychologist's opinion that your "depression [was] the underlying factor related to [your] obesity and alcohol abuse." And, on 18 March 2023, the VA granted you service-connection for unspecified depressive disorder with anxious distress and alcohol use disorder at a 70% disability rating, effective 23 September 2016.

In your application to this Board, you requested that your naval records be changed to reflect your placement on the Permanent Disability Retired List (PDRL), made effective the date of your discharge from active duty, and that you receive all associated back pay and benefits dating

to the effective date of your disability-based discharge. In your application, you contend that the VA diagnosed you with service-connected depression and orthopedic conditions that significantly contributed to your inability to maintain a weight within Marine Corps body composition standards, a fact that ultimately led to your ADSEP. You therefore argue that, instead of ADSEP, you should have been processed through the Disability Evaluation System (DES) for your mental health and orthopedic conditions and ultimately medically retired. 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. On this point, the Board observed that your enlistment and medical records show that your weight control challenges were of long standing and preceded any mental health-related complaints. You described yourself as "always heavy," reported a weight in high school of 260 pounds, and your medical records reflect an initial MEPS weight of 235 pounds. At the time of your initial assignment to the BCP, you weighed 245 pounds (12 pounds above your maximum allowable weight). Further, you were twice evaluated by a U.S. Navy Flight Surgeon during your assignment to the BCP, and each time the Flight Surgeon assessed that you did not suffer from any medical condition that rendered you unable to maintain a qualifying weight.

Your own contentions further undermine the argument that your mental health-related symptoms excused or mitigated the behavior that resulted in your discharge. Specifically, you contend in your personal statement that "[f]ollowing assignment to the . . . BCP, [you] began exhibiting significant symptoms consistent with mental health impairment, including depression, chronic fatigue, and excessive alcohol use." But this contention admits that your failure to maintain a qualifying weight (i.e., the basis for your discharge) preceded your assignment to the BCP, which, in turn, preceded the development of your mental-health related symptoms. And a mental

health condition, under basic principles of causation, cannot excuse or mitigate a course of behavior that occurred before the onset of that mental health condition.

The Board considered your contention, and the supporting opinion of [redacted] dated 10 March 2022, that depression arising from your assignment to the BCP caused you to abuse alcohol, which, in turn, resulted in increased calorie intake and complicated your efforts to return to body composition standards. Giving those contentions and supporting opinion, the Board found that while your initial weight control failure (i.e., the initial cause for your assignment to the BCP) was not excused by a mental health condition, subsequent symptoms did excuse or mitigate, to some extent, your inability to engage in a positive course of conduct that would enable you to return to standards. However, the Board noted that premeditated misconduct, including substance abuse, is not generally excused by mental health conditions. And in this case, the Board found that the limited mitigation arising from emerging symptoms of depression was outweighed by: (1) your failure to maintain body composition standards even before the emergence of any mental health symptoms; and (2) your subsequent substance abuse, a premeditated behavior that actively prevented you from correcting the basis for 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: (1) the circumstances of your service and discharge warranted an Honorable discharge; or (2) a mental health condition sufficiently mitigated your in-service misconduct as to warrant an upgrade. 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 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.

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.

In its review of the entirety of the available record, the Board found that you provided insufficient evidence to overcome the presumption of regularity and to prove, by a preponderance of the evidence, that the Marine Corps erred when it separated you due to weight control failure, instead of referring you to the DES for an evaluation of fitness and potential disability separation or retirement. In reaching this decision, the Board noted that you identify three VA service-connected conditions that you contend rendered you unfit for service as of your

date of discharge: (1) lumbosacral strain with radiculopathy; (2) bilaterial knee strain; and (3) unspecified depressive disorder with anxious distress.

First, regarding your lower back strain, the record reflects that in October 2003, you made one visit to your primary care provider with a complaint of back pain. However, there is no evidence that you sought further treatment, that any meaningful injury was ever identified, or that it affected your ability to reasonably perform your job. Second, regarding your knee pain, although you sought treatment on three occasions, your providers did not identify any structural injury, treated you conservatively, and, only a month before your discharge, you denied regularly suffering pain (from any cause). Third, regarding your VA-diagnosed depressive disorder, your case file contains no records, apart from your own personal statement, that establish that any symptoms you suffered in-service were unfitting. Your case file contains no evidence that you were diagnosed with, or sought treatment for, any psychiatric condition during your time with the Marine Corps. Further, despite the Board's 12 June 2025 request to you for additional supporting documentation, you provided no in-service medical records reflecting mental health-related complaints, treatment, or the work-related impacts of your symptoms. The Board was thus left entirely without medical evidence with which to assess your state of mental health while in service and, in turn, your claims of error or injustice. Finally, because you were never referred into the DES, the presumption of regularity compels the Board to conclude that none of your in-service medical providers assessed that your medical conditions met the criteria for referral and fitness evaluation.

The Board recognized that, effective 23 September 2016, the VA rated you as 90% disabled due to service-connected medical conditions including, among others, unspecified depressive disorder with anxious distress, bilateral knee strain, and lumbosacral strain with bilateral sciatica and associated radiculopathy. However, the Board also notes that VA disability ratings have a different purpose from DES 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). So an individual might have a VA disability rating that reflects some level of impairment, even though that individual can still perform the full range of their required military duties. Therefore, while you have been assigned an overall VA rating of 90%, this rating alone is not conclusive evidence that you were unfit for duty at the time of your discharge.

The Board further notes that VA ratings reflect the veteran's medical condition: (1) at the time of examination; or (2) at an identifiable point in the past, where medical records permit the VA to make a retroactive disability determination. In your case, the evidence you presented to the Board is that the VA rated you as 90% disabled as of 23 September 2016. But that VA rating, on its face, reflects your condition more than 10 years after your discharge. It is not evidence of your condition at the time of your discharge in 2006.

In sum, 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.

Accordingly, given the totality of the evidence of record, the Board determined that your application 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,

4/27/2026

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