



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

Docket No. 7459-25
Ref: Signature Date

[REDACTED]
[REDACTED]
[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 27 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 24 April 2026 advisory opinion (AO) furnished by the Board's physician advisor, which was considered favorable to you.

A review of your record shows that on 18 October 2000, you commenced active-duty service with the U.S. Marine Corps.

Regarding your disciplinary record, in April 2001, you received non-judicial punishment (NJP) for traveling out-of-bounds and failing to report to your duty location following liberty. You attribute this offense to an agreement with another Marine to switch fire watch shifts, and the other Marine failed to appear for your assigned shift. The NJP record, however, indicates that you traveled to [REDACTED] (from [REDACTED]), without authorization.

Then in November 2001, you received a second NJP after testing positive for cocaine use, which you attribute to poor judgment and an attempt to fit in with other Marines while celebrating your graduation from Division School. Your command did not administratively separate (ADSEP)

you, despite the Marine Corps' "zero-tolerance" policy for illegal drug use. You attribute this to your demonstrated high performance as a Marine and your command's perception that your potential remained high, despite your errors.

From February to May 2003, your unit ([REDACTED]) deployed in support of Operation Iraqi Freedom (OIF). You report engaging in extensive combat, seeing fellow Marines killed and wounded, and exposure to enemy and civilian dead, including children. Although the record before the Board does not provide details regarding your combat experience (apart from your own statement), the Naval Discharge Review Board (NDRB) reviewed your case in 2011, and the NDRB found that you “conducted [yourself] with honor in combat.”

In November 2003 (approximately six months after your return from Iraq), you used methamphetamines, an action that you contend occurred in the context of a suicide attempt motivated by symptoms later diagnosed as post-traumatic stress disorder (PTSD). In February 2004, you pleaded guilty to methamphetamine use at special court-martial and were sentenced to confinement, forfeiture of pay, reduction in rank to Private, and punitive discharge with a “Bad Conduct” (BCD) characterization of service.

Following your conviction, you did not argue that your special court-martial verdict and sentence were erroneous or excessive and, on 28 January 2005, the U.S. Navy-Marine Corps Court of Criminal Appeals, after a review of your record and court-martial proceedings, affirmed your verdict and sentence.

On 13 April 2005, you were discharged from the Marine Corps with a BCD.

Regarding your medical record, both prior to and following your discharge, you were treated for PTSD, including inpatient hospitalization (including while on appellate leave following your court-martial conviction due to suicidal ideation and attempts), medication management, and psychotherapy. In-service, you were diagnosed with Major Depressive Disorder and Panic Disorder; however, the Board's medical advisor, in an AO drafted in connection with your case, opines that PTSD was your primary psychiatric diagnosis at the time of your discharge.

Post-service (in 2011), you sought discharge relief through the NDRB. Following its review of your case, the NDRB, on clemency grounds, upgraded your characterization of service from BCD to “Under Other than Honorable Conditions” (OTH). Specifically, the NDRB found that PTSD partially mitigated your drug use. However, considering that: (1) your first instance of drug use occurred prior to your OIF deployment (and thus preceded any combat-related trauma); (2) your command had determined, in their discretion, to retain you and thereby provide you the opportunity to correct your deficiencies; and (3) you again used drugs (though concededly within the context of your PTSD symptoms), the NDRB determined that an upgrade to an Honorable characterization of service was not warranted. The NDRB declined to change your narrative reason for separation from “Court-Martial.”

In 2014, you applied to this Board for correction of your naval record. Your case file could not be located, though the Board noted that its electronic records reflect that your previous application was denied.

In 2025, the Department of Veterans Affairs (VA) granted you an Honorable characterization of service for VA purposes, thereby providing you access to VA care, benefits, and disability compensation. Also in 2025, the VA granted you service-connection for PTSD at a 50% disability rating.

In your application, you disclose three post-service “lock-ups” for domestic violence, two “lock-ups” for aggravated battery, and a sentence to federal prison (from which you were recently released) on weapons charges.

To aid its deliberations in this case, the Board obtained the AO mentioned above. The AO is favorable to your request, in that it finds that you suffered in-service from PTSD, your PTSD was attributable to your military service, and PTSD contributed to your post-deployment drug use. The AO further opines that PTSD likely rendered you unfit for military service at the time of your discharge, and your condition warranted referral to the DES and a 50% disability rating. The AO did not, however, render an opinion regarding the propriety of your discharge and characterization of service, which, in any event, arose out of a criminal conviction—not an administrative separation—that you did not appeal.

In your application to this Board, you requested that your naval records be changed to reflect: (1) your disability retirement due to PTSD; (2) a narrative reason for separation and separation code consistent with disability retirement; (3) a re-enlistment code of RE-1; and (4) an upgrade to an Honorable characterization of service. You contend that your court-martial sentence was too harsh, as under today’s standards your diagnosis with PTSD (which is now better understood by the military) would have prevented you from proceeding to court-martial or would have resulted in a more lenient sentence. Further, you contend that your psychiatric symptoms rendered you medically unqualified for continued service prior to your discharge, and you thus should have been found unfit and awarded disability retirement.

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 13 April 2005, you received a punitive discharge as a component of your sentence following your criminal conviction by special court-martial, arising from your illegal use of methamphetamines. The fact of your methamphetamine use is not in dispute—you admitted your use and pleaded guilty to the offense at court-martial. You voluntarily waived representation by counsel and agreed to that sentence (including your discharge and characterization of service), which was reviewed and affirmed by an appellate court. With this factual background, the Board noted that it is required to evaluate whether a mental health condition sufficiently excused or mitigated your drug use as to undermine the basis for your discharge or characterization of service.

The Board notes that the AO opines:

[T]he preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he suffered from a duty-limiting condition that may have rendered him unfit for continued service and warranted greater consideration for referral to the [Disability Evaluation System] (DES) for adjudication for fitness of duty and may have mitigated his in-service misconduct behavior.

Petitioner's 2011 NDRB decision likewise found that "[b]ased upon a review of the medical evidence and the unique nature and circumstances of this case . . . [Petitioner's] diagnosed Depression and chronic PTSD were mitigating factors associated with his in-service misconduct as related to his Special Court-Martial on 17 February 2004."

Upon review of your case file, and the opinions of the Board's physician advisor and the NDRB, the Board concurs that your PTSD mitigated your post-deployment drug use without "completely absolv[ing you] of [your] misconduct," especially considering your command's extraordinary decision to retain you in the Marine Corps following your pre-deployment cocaine use (despite the Marine Corps' "zero-tolerance" policy regarding illegal drug use) and the clear expectation that you would refrain from further illegal drug use. Accordingly, the Board concurs that the appropriate remedy in your case, on clemency grounds, was to upgrade your characterization of service from BCD to OTH, which the NDRB granted in 2011 and which is reflected in your corrected DD Form 214 issued 20 June 2011. The Board further noted that while your case before the NDRB preceded publication of the Kurta Memo, the analytical framework and substantive review conducted by the NDRB in your case substantially corresponded to the "liberal consideration" guidance outlined in the Kurta Memo.

The Board, however, found no grounds to question the propriety of your discharge in connection with your court-martial conviction. While an acute mental health crisis may have prevented you from acting with appropriate consideration at the moment you chose to use methamphetamines, there is no evidence that you were similarly impaired during your court-martial. In the context

of your court-martial proceeding, you were offered legal counsel and enjoyed formal procedural protections. You knowingly and voluntarily chose to plead guilty to the illegal use of methamphetamines, and you likewise knowingly and voluntarily chose to accept a sentence that included your punitive (i.e., non-disability) discharge from the Marine Corps. Further, court-martial sentencing rules expressly advise the court to consider mitigating factors when determining a sentence. Thus, in the ordinary course, your mental health-related symptoms (then attributed to major depressive disorder and panic disorder but later attributed to PTSD) would have been considered in determining your sentence. The presumption of regularity therefore compels the Board to find that the sentence that the court proposed, and that you agreed to, already reflected any mitigation that the court believed to be appropriate. Your conviction and sentence were then reviewed and approved by appropriate authorities, including by an appellate court—a review that occurred automatically, and without your allegation of error in the conduct of your court-martial.

Thus, while you may have qualified for referral to the DES due to PTSD, as suggested by the AO, your court-martial conviction and sentence provided sufficient and independent grounds for your discharge, notwithstanding any medical condition.

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 discharge (as a component of your sentence following your criminal conviction) was erroneous. The Board thus found no error in the Marine Corps' actions.

Having found your discharge by court-martial sentence not to be erroneous, the Board turned its attention to whether that action was 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.

The Board then turned to the second step of the Vazirani framework for its analysis of your request for disability retirement. However, having found that your discharge by court-martial sentence was not erroneous or unjust, the Board determined a formal determination regarding your fitness for duty is irrelevant to the fact and consequences of your criminal conviction since you were ineligible for disability consideration based on your court-martial conviction and punitive discharge.

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,

6/9/2026

