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

[redacted]
Docket No. 7628-25
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.

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").

A review of your record shows that you commenced active duty in the U.S. Navy on 5 March 2019.

In July 2019, you complained of bilateral shoulder pain following combatives training. In February 2020, MRI imaging of your left shoulder showed a complex labral tear with mild rotator cuff tendinosis; your right shoulder did not show any structural injury.

In October 2020, you underwent arthroscopic surgery on your left shoulder, after which you continued to complain of bilateral shoulder pain and subjective symptoms of weakness and "clicking," despite consistently normal evaluations and diagnostic imaging.

In May 2021, you complained of back pain and bilateral hip and leg pain. Diagnostic imaging of your hips and back over the course of months revealed small labral tears in each hip and mild degenerative changes of your lumbar spine, all of which were recommended for conservative

management only. The narrative summary prepared by your orthopedist in connection with your later referral to the Disability Evaluation System (DES) indicated that you "walk[ed] slowly with a walker" but also noted that you were able to walk without one, and examinations of your hips and lower leg were normal, despite your subjective complaints.

On 5 July 2022, you were referred to the DES due to: (1) pain in left shoulder; (2) pain in right shoulder; (3) pain in left hip; and (4) pain in right hip.

On 6 January 2023, after a review of your Department of Veterans Affairs (VA) Compensation & Pension (C&P) examinations, the Medical Evaluation Board (MEB) determined that no additional conditions (apart from those already referred) should be added to your DES referral.

On 26 January 2023, in connection with your referral to the DES, you submitted a personal statement in which you encouraged the Physical Evaluation Board (PEB) to find you unfit for "5 bulging discs, positive screening for [traumatic brain injury] (TBI), four labrum tears, eye injury, jaw injury, neuropathy in both arms, and post-traumatic stress disorder (PTSD)[,] along with "dislocations, . . . migraines," and myocarditis with atrial septal defect.

On 18 May 2023, the Informal PEB found you unfit for all of your referred conditions (i.e., injuries to both shoulders and both hips). You did not contest your Informal PEB findings or request a hearing before the Formal PEB. Therefore, on 23 June 2023, the PEB requested that you be placed on the Permanent Disability Retired List (PDRL) at a combined disability rating of 50%. And on 22 August 2023, you were permanently retired from the Navy.

On 9 September 2023, the VA granted you service-connection, effective 23 August 2023, for the following conditions (among others): (1) right shoulder impingement syndrome at a 20% disability rating; (2) left shoulder arthroscopic labral tear repair (20%); (3) right hip femoral acetabular impingement syndrome (10%); (4) left hip femoral acetabular impingement syndrome (10%); (5) lumbar paraspinal tendonitis (10%); (6) cervical paraspinal tendonitis (10%); (7) migraine (30%); (8) PTSD (50%); (9) temporomandibular joint disorder (TMJ) (20%); and (10) post-atrial septal defect repair (60%).

In your application to this Board, you requested that your naval records be changed to reflect your unfitness for right knee pain, lumbar and cervical paraspinal tendonitis, atrial septal repair, sleep apnea, PTSD, and TMJ. You contend that these conditions were present and documented during your DES process and met criteria for unfitness, in that they significantly limited your ability to perform your military duties. You contend that the omission of these conditions from your PEB finding resulted in an inaccurate retirement percentage, and correction is necessary to ensure fairness and proper recognition of all of your service-related impairments.

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 Department of the Navy's 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.

In your case, you were honorably discharged. You did not request—nor could you have requested—discharge relief, as an honorable discharge is the most favorable characterization of service. Thus, the first step of the Vazirani framework does not apply to your case.

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.

As an initial matter, the Board noted that you did not contend in your application that the Formal PEB's finding of unfitness regarding your bilateral shoulder and hip injuries was erroneous. The Board thus did not revisit that aspect of your DES process.

Regarding your claim of unfitness due to your VA service-connected disabilities, the Board considered 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 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 of 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 concluded that you provided insufficient evidence to overcome the presumption of regularity and to prove, by a preponderance of the evidence, that the Department of the Navy erred when it placed you on the PDRL due to your shoulder and hip disabilities only.

In reaching this decision, the Board considered that the VA, under its own standards, found you to be permanently and totally disabled due to service-connected disabilities, effective 23 August 2023. The Board also noted the following ratings for individual conditions: (1) right knee pain (10% disabling); (2) lumbar paraspinal tendonitis (10%); (3) cervical paraspinal tendonitis (10%); (4) atrial septal defect (post-surgical) (60%); (5) obstructive sleep apnea (50%); (6) PTSD (50%); and (7) temporomandibular joint dysfunction (20%).

But the Board noted that VA disability ratings have a different purpose from IDES fitness determinations (which the VA does not and cannot make). 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). Therefore, while the VA assigned you disability ratings for PTSD, cardiovascular issues, joint dysfunction, and other conditions, those ratings, without more, are not conclusive evidence that those conditions rendered you unfit for duty at the time of your discharge.

In your case, the Board observed that on 5 July 2022, you were referred to the DES due to bilateral shoulder and bilateral hip pain. Between 6 December 2022 and 5 January 2023, you underwent comprehensive VA C&P medical evaluations during which VA-associated clinicians documented all service-connected symptoms and medical conditions that they either observed first-hand or found to be substantiated in your medical record, without regard to whether those symptoms might be considered unfitting under Department of the Navy standards. Following those comprehensive examinations, on 6 January 2023, the Senior Physician Member of the MEB reviewed the VA's records and assessments to determine whether other, non-referred conditions (i.e., apart from your shoulder and hip disabilities) might also render you unable to reasonably perform your military duties and thus require referral to the DES. Following that review, the MEB found that no additional conditions warranted such a referral.

Approximately three weeks later (on 26 January 2023), you drafted a letter to the President of the Physical Evaluation Board (PEB), in which you encouraged the PEB to find you unfit and identified the following conditions as potentially unfitting: five bulging discs, TBI, four labral tears, partial dislocations, an eye injury, a jaw injury, neuropathy in your arms and legs, PTSD, migraines, sleep issues, difficulty eating some foods, myocarditis, and atrial septal defect (i.e., essentially the same conditions for which you urge this Board to find you unfit).

On 18 May 2023, the Informal PEB reviewed your case file (including your letter describing the conditions that you argued were unfitting) and found you unfit for the four conditions (i.e., left shoulder pain, right shoulder pain, left hip pain, and right hip pain) that had been referred by the MEB for their consideration, for a combined disability rating of 50%. As a result of your 50% combined disability rating, the PEB also recommended that you be permanently retired due to disability.

Following publication of your Informal PEB finding, you could have challenged the PEB's decision, demanded a hearing before the Formal PEB, and argued that you should be found unfit for additional conditions. You did not do so. The PEB therefore finalized your DES case and requested that the Chief of Naval Personnel place you on the PDRL.

On 22 August 2023, you were retired from the U.S. Navy and awarded all benefits and pay associated with that status.

In light of the above, the Board found that you failed to show any procedural or substantive irregularity regarding the PEB's consideration of your fitness for duty. The presumption of regularity therefore compels the Board to find that the PEB's finding and your consequent disability retirement were not erroneous.

You contend that after your retirement, you reviewed your records and VA ratings and "recognize[d] that several service-connected conditions that existed during [your] MEB were not properly considered as unfitting by the PEB." However, your VA rating and all of your in-service medical records were available to you throughout your 13 months in the DES, during which you were also assigned formal legal counsel. To the extent you failed to review your own records and chose not to exercise your due process rights in the context of a DES process specifically designed to adjudicate your fitness for duty, any error was unfortunately your own.

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 Department of the Navy's actions at the time of your discharge were erroneous. Then, having found the Department of the Navy's 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.

The Board therefore 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

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