



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

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Docket No. 8256-25
Ref: Signature Date

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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 29 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 on 2 September 2014, you commenced active-duty service with the U.S. Marine Corps.

Regarding your medical record, in November 2019, you were diagnosed with, and successfully treated for, testicular cancer. The record does not reflect that you suffered meaningful complications arising from that diagnosis or its treatment.

On 4 March 2020, you were referred to the Disability Evaluation System (DES) to determine whether a longstanding right hip injury (a labral tear and suspected poorly healed muscle tear) rendered you unfit for continued service. The record reflects that you originally suffered the injury in 2018 during a Marine Corps Martial Arts Program training session. You completed a

long course of conservative treatment, consisting primarily of physical therapy, activity modification, and pain management, but you continued to complain of persistent pain, especially when jogging or wearing military equipment. In the narrative summary associated with your DES referral, your provider wrote:

The S[ervice] M[ember] has been on four [periods of limited duty] since Jan[uary] 2019 without being able to return to full duty. It is the opinion of the Medical Board that the patient has now received the maximum benefit of military treatment[,] and [it] has not restored the patient to a full duty status. This condition is not likely to improve to allow return to duty in the [Service Member's] office, grade, rank, or rating within 12 months. It is unlikely that there will be a significant change in the Service Member's disability level in the next three years. The S[ervice] M[ember] will continue to require primary and specialty care for this condition over the next 12 months and into the foreseeable future.

Seven months after your original DES referral, on 7 October 2020, a Medical Evaluation Board (MEB) psychiatrist drafted a behavioral health addendum to your DES referral, thereby formally referring your diagnosed “adjustment disorder with mixed anxiety and depressed mood” to the DES for a fitness assessment “out of an abundance of caution.” In her addendum, the psychiatrist writes that “the condition was medically acceptable at the time [you were] referred to I[n]tegrated D[isability] E[valuation] S[y]stem], but worsened and became impairing in the context of a new stressors (legal issues) in June.” The addendum specifically notes your multiple in-patient psychiatric hospitalizations associated with suicidal ideation and “behavioral disturbances,” purportedly exacerbated by conflicts with your command and pending disciplinary action. The addendum also notes that behaviors associated with your mental health condition “did not interfere with duty performance until after [you] were referred to [the Integrated Disability Evaluation System] and encountered a new stressor in the form of legal/administrative issues.” The behavioral health addendum conceded that civilian providers had diagnosed you with post-traumatic stress disorder (PTSD) but noted that records from your civilian providers did not show that you met the formal diagnostic criteria for that condition. The addendum further emphasized that: (1) your consistent diagnosis within the military mental health care community had been “adjustment disorder”; (2) the medical evidence did not support a PTSD diagnosis; and (3) your treating psychologist specifically documented “his firm professional opinion that [you did] not meet criterion A for PTSD [(i.e., exposure to a traumatic event involving actual or threatened death, serious injury, or sexual violence)], so [he] consider[ed] the diagnosis placed while inpatient at the civilian psychiatric hospital . . . incorrect.”

Your DES process was not completed prior to your discharge from the Marine Corps, and the record does not reflect that the Physical Evaluation Board (PEB) ever rendered a fitness determination regarding your physical and psychological conditions.

Regarding your disciplinary record, on 24 December 2017, while assigned to the ██████████ ██████████, as a Marine Security Guard, you missed curfew. On 10 January 2018, by non-judicial punishment (NJP), you were found guilty of a violation of UCMJ Article 92 (failure to obey an order or regulation), arising from that incident.

On or about 23 October 2018, you wore Army Achievement and Inherent Resolve Campaign medals knowing that they were not in your service record. The same day, you were formally counseled for violations of UCMJ Article 134 (wearing authorized medals).

From 16 January to 4 February 2019, you repeatedly failed to properly check-in to your assigned duty location. On 13 March 2019, you were formally counseled for violations of UCMJ Article 86 (unauthorized absence).

On 5 June 2020, your First Sergeant directed you to appear for an accountability muster. You communicated to your First Sergeant that you were “not doing well mentally at all” and needed to see a behavioral health provider. Your First Sergeant then communicated to you, “That’s perfectly fine. Come in as discussed at 0730 in the uniform of the day. After that, you can call behavioral health and make an appointment[,] and you can go and be seen today.” Despite your First Sergeant’s explicit instructions, you failed to report as directed and, instead, presented to the ██████████ Behavioral Health Walk-In Clinic, complaining of depression and transient suicidal ideation. On 19 June 2020, by NJP, you were found guilty of violations of UCMJ Articles 86 (unauthorized absence) and 92 (failure to obey an order or regulation), arising from your failure to comply with your First Sergeant’s direction.

On 31 July 2020, you were notified of the commencement of administrative separation (ADSEP) proceedings against you. On 23 October 2020, following an ADSEP board, the Commanding General (CG), ██████████, directed that you be separated with an Honorable characterization of service due to a pattern of misconduct. CG ██████████ noted that he carefully reviewed your military behavioral health provider’s assessment that while you did not have PTSD or Traumatic Brain Injury (TBI), you did suffer from adjustment disorder with mixed anxiety and depressed mood. CG ██████████ ultimately determined, however, that the nature and quality of your misconduct were not sufficiently mitigated by your mental health condition and symptoms. Accordingly, CG ██████████ directed that your DES processing be terminated and your ADSEP carried out.

In your application to this Board, you requested that your naval records be changed to reflect: (1) disability retirement; (2) a separation code of RFJ; (3) a re-enlistment code of RE-2; (4) a narrative reason for separation of “Permanent Disability, Retired”; and (5) the removal of your 19 June 2020 NJP and any associated documents. You contend that your discharge was unjust and inequitable and was the direct result of your chain of command’s anger about your extensive need for physical and mental health treatment. You further contend that if not for your chain of command’s disregard for your well-being, you would have been medically retired at the conclusion of the DES process. You contend that your First Sergeant’s direction on 5 June 2020 to appear for an accountability muster before seeking mental health care was illegal. Finally, you contend that CG ██████████ was not the designated Separation Authority in your dual processing case (i.e., with concurrent processing for ADSEP and disability separation or retirement), and thus his termination of your DES process and approval of your ADSEP was illegal.

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.

In your case, you were honorably discharged. You did not request—nor could you have requested—an upgrade to your characterization of service, as an honorable discharge is the most favorable characterization of service.

You did request that the Board find that CG ██████████ termination of your DES process, and his consequent approval of your ADSEP, was erroneous or unjust.

In support of that request, you contend that CG ██████████ was not the designated Separation Authority in your dual processing case, and you argue that the ADSEP of service members diagnosed with or reasonably alleging PTSD must be approved by the Chief of Naval Personnel (CNP). However, under MILPERSMAN 1910-704, CNP is the Separation Authority for the involuntary separation of active-duty members of the U.S. Navy with PTSD. But you were a member of the U.S. Marine Corps. In your case, under MARCORSEPMAN 6307, “[t]he separation authority for Marines diagnosed with or reasonably alleging PTSD, other mental disorder or TBI in which a general (under honorable conditions) characterization of service is authorized, shall be an officer exercising general court martial convening authority.” CG, ██████████ is an officer exercising general court martial authority. Thus, CG, ██████████ was the appropriate Separation Authority in your case.

You further argue that, under NAVADMIN 016/18, CG ██████████ had no authority to determine (as he did) that your mental health conditions did not sufficiently mitigate your misconduct as to undermine your basis for ADSEP, as such a determination must be made by a medical provider. However, again, the policy you cite explicitly applies only to “Navy enlisted personnel,” not to members of the Marine Corps.

To further assist it in consideration of your application for discharge relief, the Board sought an Advisory Opinion (AO) from the Department of the Navy, Office of the Judge Advocate

General, Military Personnel Law Branch. The AO (with which the Board concurred) was unfavorable to your request. Regarding your claims that your First Sergeant, in directing you to appear for an accountability muster, gave you an illegal order, and that your commander's subsequent NJP was improper, the AO points out:

Petitioner's arguments are without merit. As annotated in the Unit Punishment Book, Petitioner was advised of, and declined to exercise, his right to demand trial by court-martial and voluntarily accepted NJP. Petitioner was given an opportunity to consult with a lawyer. Petitioner's CO was authorized to dispose of the NJP and impose the punishment directed in accordance with [JAGINST 5800.7G] and the Manual of Courts-Martial, Part V. Further, as discussed in detail below, there was nothing illegal regarding the First Sergeant's order nor was Petitioner being prevented from accessing behavioral health services.

Next, Petitioner alleges his DD Form 214 is unjust because he "should have been medically retired instead of processed for separation under a pattern of misconduct for matters that were caused by his leadership's animus and his deteriorating physical and mental health." However, the documents provided by Petitioner directly contradict the vivid picture of an abusive command described in the application.

For example, Petitioner provided a text exchange between himself and his First Sergeant, dated 5 June 2020, to purportedly demonstrate his command lacked "empathy and concern for one of their hurting and suffering Marines" and was preventing him from receiving mental health treatment. But Petitioner quoted only his side of the conversation: "1stSgt, I need to see behavior[al] health this morning. I'm not doing mentally well at all." However, Petitioner omitted his First Sergeant's response: "That's perfectly fine. Come in as discussed at 0730 in the uniform of the day. After that, you can call behavioral health and make an appointment and you can go and be seen today . . . You will have every opportunity to go to behavioral health. That is not being denied . . ." Far from painting a picture of abuse, the record demonstrates Petitioner's command was concerned with maintaining accountability for its Marine and was affording Petitioner sufficient opportunity to care for his mental health . . .

The record also indicates CG, ██████████ adequately considered Petitioner's mental health diagnoses when deciding to separate Petitioner for misconduct. Consistent with [MARCORSEPMAN 1900.16], the separation authority determined and documented that Petitioner's separation was warranted despite his mental health conditions because Petitioner's misconduct was not sufficiently mitigated by his mental health condition. By separate correspondence, CG, ██████████ also directed that Petitioner's physical evaluation board process be terminated due to his legal action involving misconduct, as required by [MARCORSEPMAN 1900.16]. Accordingly, the record reflects that Petitioner's command followed all applicable regulations before separating Petitioner for misconduct despite his mental health conditions.

The Board finally observed that because your DES process was terminated before the PEB could render a fitness determination regarding your right hip injury and your diagnosed adjustment disorder, CG [REDACTED] was not aware of whether those conditions might ultimately have rendered you unfit. However, where, as in this case: (1) the medical evidence on a basis of which a fitness determination would ultimately be rendered is available to the Separation Authority; and (2) the Separation Authority attests to having reviewed relevant medical information to determine whether circumstances mitigating misconduct exist, the Board found no error in CG, [REDACTED] decision to approve your ADSEP prior to the conclusion of your DES process. In fact, Marine Corps policy explicitly grants him the authority and discretion to do so.

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 CG [REDACTED] approval of your ADSEP, and his termination of your DES process, was improper or unauthorized. The Board thus found no error in the Marine Corps' actions.

Having found your ADSEP, in lieu of disability separation or retirement, 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 ADSEP in lieu of completion DES processing was not erroneous or unjust, a formal determination regarding your fitness for duty is irrelevant to the fact and consequences of your administrative discharge. The Board thus declined to render a decision regarding your fitness for duty.

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,

5/7/2026

Executive Director

Signed by: