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

[redacted]
Docket No. 8412-25
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 22 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 commenced active duty in the U.S. Marine Corps on 7 June 2003, following two previous periods of service with the U.S. Marine Corps Reserve, both as an enlisted Marine and as an officer. During your most recent period of service, you served as both [redacted] including during four combat deployments to the [redacted]

During your 2005-2006 deployment, while serving as a Forward Air Controller with [redacted], your vehicle was damaged when the vehicle immediately behind you struck an improvised explosive device (IED). Immediately following the incident, you complained of low back pain and numbness (on a background of pre-existing sciatica), for which you were treated

conservatively. Though not a complete record of your combat service as a pilot, your record reflects that during your [redacted] you flew over [redacted] combat hours in support of combat operations.

In June 2009, you presented to the [redacted] complaining of two years of fluctuating mood symptoms including chronic anger and irritability, fleeting homicidal and suicidal ideation, an intense desire to engage in violent encounters, alcohol abuse, and compulsive gambling. You also complained of significant depression, sleep disturbance, poor concentration, and generalized anxiety. Following this initial consultation, you were placed on limited duty (LIMDU) and assigned to [redacted]) basis. You remained in a LIMDU status until your discharge in June 2011.

Due to your flight status, you requested not to be treated with psychotropic medication. Your providers therefore prescribed cognitive behavior therapy, virtual reality exposure therapy, cranial magnetic stimulation, and group therapy.

Regarding your flight status, there is contradictory information in the record. Specifically, in his 10 December 2010 [redacted] by which he recommended your referral to the Disability Evaluation System (DES), your treating psychiatrist, [redacted] states that your "first contact with psychiatry was in September of 2007, at which time, seeing psychiatry removed him from flight status." In clinical notes from a therapy session on 20 May 2009, you report being "grounded for a few weeks" in September 2008 when you "walked out of a meeting in anger . . ." (a report that is corroborated by your Special Duty Medical Abstract, which shows your temporary grounding on 4 September 2008). However, in a letter dated 13 July 2010 supporting your retention of a private pilot's license, [redacted] writes that you "ha[d] been in therapy since September of 2007 . . . [and a]ll throughout, [you] ha[d] maintained flight status, and [have] no problems with function as an aviator."

By November 2009, your treating psychiatrist, [redacted] assessed that your Post Traumatic Stress Disorder (PTSD) had significantly improved, your depression and anxiety had resolved, and he expected you to be returned to full duty. He referred you for an independent assessment by a psychologist, [redacted] who supported your return to duty and assessed your PTSD to be in remission. On 8 December 2009, [redacted] discussed with you your return to a full duty status; however, you expressed your concern that "although [you were] functioning well . . . , if [you go] back to the military environment, particularly at [redacted] [your symptoms] might [return]." You were "concerned with how [your] temper might get [you] into trouble, as [you felt] that the chain of command there [was] not treating Service Members appropriately."

Consistent with your concerns, in December 2009, you were referred to the DES for fitness assessments of four conditions: (1) PTSD; (2) chronic low back pain; (3) tinnitus; and (4) sleep apnea. At your Informal Physical Evaluation Board (PEB), you were found fit for all conditions. You then requested reconsideration of the PEB's decision. In support of your request for reconsideration, you submitted a personal statement, in which you focused your argument for unfitness on your back pain and PTSD. In addition, you submitted a letter dated 2 June 2009 that you had solicited from [redacted] which stated:

> "When [Patient] initially presented, he had very significant symptoms of PTSD that caused him to no longer be able to function in his squadron. Specifically concerning were a tendency to isolate, and a problem with anger and impulse control that would have made it dangerous for him to continue as a Marine, particularly as an Aviator. [Patient] entered into a course of intensive therapy . . . [and] he made great strides. He is functioning well on a daily level at this point, and his current symptoms do not currently meet criteria for PTSD or Major Depressive Disorder. However, he still has several residual symptoms, most notably the requirement to put all of his energy to be able to accomplish simple tasks like going out in public. Although his current function is good, relatively small stresses do cause his symptoms to flare up again. My concern is that, if returned to full duty, the full spectrum of PTSD symptoms could likely return, and, if so, he would be unlikely to have the same motivation to recover that allowed him to overcome so many of his symptoms the first time. I therefore still recommend that he be found unfit for duty."

However, in contrast to the assessment he presented to the PEB, only a month later, [redacted] drafted a letter to aid you in retaining your private pilot's license. In that letter, [redacted] stated:

> "[Patient] has been under my care, initially for a diagnosis of Post Traumatic Stress Disorder, and currently for Anxiety Disorder Not Otherwise Specified (PTSD in remission). [Petitioner] was deployed four times to Iraq between Jan 2003 and March 2007. He returned with some classic symptoms of PTSD. Even at his worst, however, he continued to function as a Harrier pilot on flight status, and had no aviation mishaps. He has been in therapy since September of 2007, and has shown tremendous progress over this time. This is to the point that he no longer meets Diagnostic and Statistical Manual criteria for PTSD. At this point, although not at his own personal baseline, he is functioning well above the level of the average individual. His symptoms never required psychiatric medication treatment, and it is not anticipated that they ever would. All throughout, he has maintained flight status, and is having no problems with his function as an aviator."

On 20 August 2010, the PEB, upon reconsideration of your case, ultimately found you unfit for service due to low back pain. However, it renewed its finding that your PTSD, tinnitus, and sleep apnea were not unfitting. You then requested and appeared with counsel before the Formal PEB, after which the PEB confirmed its most recent finding (i.e., unfit only for your low back pain, which it found not to be combat-related). Regarding your PTSD (which the PEB did find to be combat-related), the Formal PEB stated: "Concern regarding possible future exacerbation or recurrence of prior symptoms does not support a finding of unfit for a prior diagnosis which responded to treatment, with minimal prevailing mild symptoms."

Post-service, the Department of Veterans Affairs (VA) rated you as 60% disabled due to service-connected disabilities, with a 30% disability rating associated with your PTSD, effective 30 June 2011.

In your application to this Board, you requested that your naval records be changed to reflect your retroactive placement on the Permanent Disability Retired List (PDRL) arising from

unfitting PTSD and unfitting chronic low back pain. You also requested that this Board correct your PEB finding to reflect combat-relatedness for both conditions. In your application, you contend that the PEB erred when it determined your PTSD to be a Category 3 (not unfitting) condition. Instead, the PEB should have found your PTSD to be unfitting at a 30% disability rating, which, in conjunction with your low back pain (which the PEB did find to be unfitting at a 10% disability rating), would have qualified you for 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 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 contest the PEB's finding of unfitness regarding your chronic low back pain. The Board thus adopted the PEB's rationale for and finding of unfitness regarding your low back.

Turning then to your claim of unfitness for PTSD, 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 found that you provided insufficient evidence to overcome the presumption of regularity and to prove, by a preponderance of the evidence, that the PEB erred when it found your PTSD not to be unfitting.

In reaching this decision, the Board considered that, no later than 16 August 2011, the VA rated you as 30% disabled due to service-connected PTSD, effective 30 June 2011. But the Board noted that VA disability ratings have a different purpose from Integrated Disability Evaluation System 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). Therefore, while you were assigned a VA rating of 30% arising from your PTSD diagnosis, this rating alone is not conclusive evidence that PTSD rendered you unfit for duty at the time of your discharge.

The Board noted that the evidence is uncontroverted that at least as of the time you were placed on [redacted] in [redacted] (and likely for some period of months or years before then), you were suffering severe symptoms of PTSD arising from your substantial combat experience, and Navy providers formally diagnosed you with the condition. The evidence also shows that you were committed to your recovery and fully engaged in a treatment plan consisting of, among other things, intensive courses of cognitive behavioral therapy, virtual reality exposure therapy, and cranial magnetic stimulation. The Board further recognized that, considering your profession as a military aviator and your desire to preserve your flight status, the fact that you did not want, and were never prescribed, psychotropic medication is not necessarily an indication that your PTSD was not sufficiently severe as to warrant such treatment.

However, the evidence is also clear that, in your case, your commitment to recovery and your treatment plan had the intended effects. In November 2009, only five months after your first mental health consultation at [redacted] you had improved so much that you no longer met the diagnostic criteria for any mental health condition (as confirmed by the assessment of your treating Navy psychiatrist and an independent clinical psychologist). At that time, your psychiatrist noted that he expected you to be returned to full duty, indicating that he did foresee any psychiatric limitations that would prevent you from reasonably performing your job. It was only after you expressed your concern about potential future exacerbations of your condition that your doctor agreed to refer you to the DES. Even then, your concerns appeared focused on potential conflicts with your command in Yuma, and not on any limitations associated with your role as a military aviator. The Board considered that your psychiatrist, [redacted] did ultimately refer your PTSD (among other conditions) to the DES, consistent with your request; however, [redacted] essentially simultaneously drafted a letter endorsing your continued qualification as a civilian aviator, stating that:

> "Even at [your] worst . . . , [you] continued to function as a Harrier pilot on flight status, and had no aviation mishaps . . . [You] had shown tremendous progress [in overcoming your PTSD symptoms] . . . to the point that [you] no longer [met DSM] criteria for PTSD. At [that] point, although not at [your] own personal baseline, [you were] functioning well above the level of the average individual . . . and [had] no problems functioning as an aviator."

The record thus suggests that, at the time the PEB considered your case, your medical providers considered you fully qualified as an aviator. You were once temporarily grounded, but this lasted only a few weeks in 2008 (i.e., more than two years before your Formal PEB), after which you returned to flight status and retained it for the duration of your service. And while you may have been concerned about deployment and your relations with your command, the evidence does not show that PTSD prevented you from reasonably engaging in those activities and obligations. 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. Thus, the assessment of your doctors that you had not returned to your own personal baseline does not require a finding of unfitness unless that new, impaired baseline fails to meet the minimum standard. Your record simply does not reflect that you fell below that line due to PTSD as of the date of your PEB.

In explaining its decision following your Formal PEB, the PEB stated, "Concern regarding possible future exacerbation or recurrence of prior symptoms does not support a finding of unfit for a prior diagnosis which responded to treatment, with minimal prevailing mild symptoms." The Board finds no error in the PEB's assessment. Because the evidence reviewed by the PEB supports its assessment that you were fit for duty as of the date of your Formal PEB, the appropriate disposition regarding your PTSD was a return to full duty.

Regarding your request that the Board correct your PEB finding to reflect that your unfitting low back injury was combat-related, the Board, however, concurred with the PEB's finding that your lower back pain was incurred as a consequence of Extra Hazardous Service. In making this decision, the Board found your evidence insufficient to overcome the Final PEB determination. The Board also found no evidence that you exhausted your administrative remedies by pursuing a combat-related determination through the Combat Related Special Compensation Board in accordance with 10 U.S.C. Section 1413a.

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

5/5/2026

[redacted]