



Docket No. 8804-25
Ref: Signature Date

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 and conscientious 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) as well as 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 Navy and commenced active duty on 22 June 2000. You received an Honorable discharge certificate on 17 August 2003 and immediately reenlisted effective 18 August 2003. On 7 April 2009, you received nonjudicial punishment. On 23 June 2009, Commander, [REDACTED] directed your discharge under Other Than Honorable (OTH) conditions due to misconduct – serious offense. You were so discharged on 2 July 2009.

In your application, you requested to have your OTH discharge upgraded to Honorable and to receive a service disability retirement. In support of your requests, you aver that you have received new documentation from the Department of Veterans Affairs (VA) diagnosing you with post-traumatic stress disorder (PTSD) and chronic fatigue syndrome (CFS), which you contend is compelling evidence that you were suffering from serious service connected disabilities at the

time of your discharge. In further support of your requests, you provided an 18 July 2025 rating decision from the Department of Veterans Affairs (VA), which found that you have service connected disabilities of PTSD and Chronic Fatigue Syndrome.

The Board carefully reviewed your petition and all of the material that you provided with that petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. As set forth in the Vazirani Memo, the Board first applied liberal consideration to your assertion that your mental health condition potentially contributed to the circumstances resulting in your discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to your 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 addition, the Board observed that it applies a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

Thus, the Board began its analysis by examining whether your mental health condition excused or mitigated your discharge. On this point, the Board considered that you have provided evidence that post-service the VA has diagnosed you with a mental health condition. Thus, the Board considered whether this mental health condition mitigated your discharge from service. In its review of all of the material that you provided, the Board considered that your record did not contain, nor did you provide, any documentation demonstrating that you had a diagnosis and/or treatment for PTSD while you were in service. Further, the Board noted that you did not discuss how any such PTSD symptoms while you were in service mitigated the serious offense for which you were discharged. On this point, the Board further noted that your service record does not contain documentation concerning the underlying offense for which you were ultimately discharged, nor does it contain the full administrative discharge documentation. Ultimately, even applying special and liberal consideration, the Board lacked the necessary evidence or information to find any nexus between the misconduct for which you were discharged with any active symptoms of PTSD while you were in service that could mitigate such misconduct. Thus, the Board determined that you failed to overcome the presumption of regularity that attached to your discharge and characterization thereof at the time you discharged in 2009.

After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to 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 considered whether your mental health condition should have resulted in your being reviewed by the Physical Evaluation Board and ultimately retired with a service disability retirement. Upon its review of all available materials, the Board determined that you provided insufficient evidence of an error or an injustice in the fact that you were not retired with a disability retirement. In reaching its decision, the Board observed that your record did not contain, nor did you provide, any evidence that, while you were in service, any of your treating providers or members of your command recommended that

you be referred to the Disability Evaluation System (DES) for evaluation and determination of whether you had any potentially unfitting conditions. In fact, the Board noted that you did not provide any documentation relating to treatments for your mental health condition while you were in service. In addition, the Board considered that you have provided post-service findings by the VA that you have service connected PTSD and Chronic Fatigue syndrome. You have argued that these post-service conditions, which were diagnosed some years after your service, evidenced that you were actually unfit during your active duty service. On this point, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service DES. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Further, even assuming, arguendo, that you were placed into the DES while you were in service, the Board noted that discharges due to misconduct take precedence over processing through the DES. Therefore, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, the Board did not observe any error or injustice in your naval records.

Accordingly, given the totality of the circumstances, the Board determined 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,

6/16/2026

