



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

Docket No. 8969-25
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 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").

A review of your record shows that you commenced active duty in the U.S. Marine Corps on 21 February 2006.

In May 2007, while deployed to Iraq as a Light Armored Vehicle Crewman, you suffered a vehicle rollover. During the rollover, you described accidentally hitting the air release lever of your seat, which pushed the seat to the top of the vehicle, trapping your head and neck in a bent position. Following that incident, you complained of persistent neck and back pain; however, your doctors did not identify any notable structural dysfunction in your lumbar or thoracic spine and recommended only conservative treatment for your pain.

In December 2007, you broke your right clavicle while wrestling. You underwent surgical repair of your clavicle the next month but subsequently developed right shoulder instability. You

underwent a second right shoulder surgery in October 2008 and extensive follow-on physical therapy, but you continued to experience pain and popping in your shoulder and a decreased range of motion.

In March 2010, you were referred to the Disability Evaluation System (DES) due to your right shoulder injury and back pain. The same month, the Informal Physical Evaluation Board (PEB) found you unfit for continued service due to shoulder instability only (at a 20% disability rating under Department of Veterans Affairs (VA) Diagnostic Code (DC) 5201). The Informal PEB did not find your back pain to be unfitting.

You disagreed with your Informal PEB findings and demanded a hearing before the Formal PEB. In your Petition for Formal Reconsideration dated 22 July 2010, you requested that the Formal PEB find you unfit for the following conditions (in addition to the right shoulder injury that the Informal PEB had previously found unfitting): (1) back pain under VA DC at a 10% disability rating; and (2) post-traumatic stress disorder (PTSD) under VA DC 9411 at a 50% disability rating.

Regarding PTSD, your petition describes symptoms of guilt, incidents of poor memory, poor anger management, marital difficulties, intrusive thoughts, sleep disturbance, and nightmares. The petition alleges that you had received care for PTSD (arising from the death of a fellow squad member) since 2008; however, the earliest medical records that note your treatment for PTSD are dated March 2010 (i.e., one month after your referral to the DES).

After a hearing on 27 July 2010, the Formal PEB again found you unfit only due to your shoulder injury. It found your back pain and PTSD not to be unfitting conditions. Regarding your claim of unfitness due to PTSD, the Formal PEB medical officer noted, "PTSD was [a] recent diagnosis given by [a] civilian provider in March 2010. The civilian provider began [the] member on medication and had a couple of follow-up visits. Exhaustive review of [the] case file finds no diagnosis or treatment for [PTSD]. No convincing evidence that [the] member is unfit for PTSD."

You chose not to appeal your Formal PEB findings and, instead, accepted your disability separation with severance. In your application to this Board, you contend that you did so because you received poor legal counsel and mistakenly believed you would lose access to VA benefits and care if you pursued disability retirement.

In September/October 2010 (i.e., after accepting your PEB finding but before your discharge), you underwent a neurocognitive evaluation, during which you described symptoms of increased anger and irritability, visual problems, and memory difficulties after your 2007 roll-over accident. Following that evaluation, you were diagnosed with traumatic brain injury (TBI), which was deemed more likely than not to be related to your roll-over accident. Your evaluating neuropsychologist opined:

He continues to experience negative sequelae of [TBI], but by and large I believe the actual physical damage to his brain at this point is mild . . . [However,] I believe that the [TBI], coupled with the firefight that followed shortly thereafter additively created . . . negative psychological sequelae, which are far from resolved. I suspect

that his brain was not functioning well when the firefight took place in August [2007], and he was unable to process the events that were happening to him and those around him. In essence, the psychological trauma was magnified by the head injury, and the head injury prevented psychological adjustment.

On 30 October 2010, in accordance with the determination of the PEB, you were separated from the Marine Corps with severance due to your unfitting right shoulder injury.

On 10 December 2010, you underwent a VA Compensation & Pension examination in support of your claim for service-connection of PTSD. Following that examination, the VA examiner diagnosed you with PTSD and referred you for a biopsychosocial assessment and treatment plan through the VA healthcare system. Although your recent (i.e., 2024) VA record reflects that the VA did, in fact, award you service-connection for PTSD, the record before the Board does not reflect when service-connection was awarded, the disability rating associated with that condition, or the effective date of your initial PTSD disability rating.

The VA later found you to be permanently and totally disabled due to service-connected medical conditions effective 25 May 2016.

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) and that you receive all benefits and pay associated with that status. You contend that your PEB finding should reflect all of the medical conditions that the VA ultimately found to be service-connected. You contend that you were denied due process, in that you trusted your assigned military lawyer to properly advise you, and, on the basis of misguided counsel, you accepted separation with severance because you believed it to be the only way to preserve your access to VA benefits and care after your discharge.

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 mental health condition 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 decision regarding your right shoulder injury 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 Marine Corps erred when it separated you with severance due to your right shoulder disability only.

In reaching this decision, the Board considered that the VA rated you as permanently and totally disabled due to service-connected disabilities, effective 25 May 2016. The Board also noted the following ratings for individual conditions as of 2022: (1) migraines (50% disabling); (2) PTSD (30%); (3) left shoulder pain (20%); (4) right knee pain (10%); (5) left knee pain (10%); (6) TBI (10%); (7) degenerative arthritis of the spine (10%); (8) lumbar or cervical strain (10%); and (9) flat feet (10%).

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). Further, VA ratings reflect diagnoses and levels

of impairment at a specific point in time. In your case, the earliest VA ratings you provided for the Board's review show an effective date of 25 May 2016—more than five years after your discharge from service. Therefore, while the VA assigned you disability ratings for PTSD, TBI, migraines, and orthopedic conditions, and ultimately found you to be permanently and totally disabled years after your discharge, those ratings, without more, are not conclusive evidence that one or more of that conditions rendered you unfit for service at the time of your discharge in 2010.

Regarding your VA service-connected conditions of left shoulder pain, bilateral knee pain, and flat feet, you have provided no evidence that you were diagnosed with, or complained of symptoms consistent with, any of these conditions during your service. The Board was thus left entirely without evidence with which to assess your claims of unfitness due to these conditions, much less to find that you satisfied your burden to prove your unfitness by a preponderance of the evidence.

Regarding your claim of unfitness due to migraines, your record first reflects your diagnosis with migraines in March 2010 in the context of a psychological evaluation. Your psychiatrist prescribed you Depakote in May 2010, and your September 2010 neurocognitive evaluation also mentions your complaints of headaches and migraines. However, none of your records note the frequency and severity of your migraines, any escalating or additional treatment, or whether migraines meaningfully impacted your ability to perform your military duties. The evidence was thus again insufficient for the Board to independently assess your claims of unfitness due to migraines.

Regarding your claims of unfitness due to TBI and/or PTSD, your 29 September 2010 neurocognitive evaluation—which, only one month removed from your discharge, provides an essentially contemporaneous description of your then-current state—described your TBI as “mild.” Instead of significantly disabling in its own right, your evaluating neuropsychologist opined that your 2007 TBI likely made you more susceptible to the psychological impact of a later firefight during that same deployment to Iraq.

But whatever those psychological effects and symptoms were, the record does not reflect that you sought treatment for them or complained of psychological symptoms until March 2010—more than two years later. And while you contend that you were diagnosed with PTSD in 2008 after your return from Iraq, the record simply does not support that contention.

Instead, the record reflects that one week after your DES referral (and only four days before your Informal PEB), you underwent an initial psychiatric evaluation with a civilian provider, after which you were diagnosed with PTSD. You continued to see your civilian psychiatrist at least through the date of your Formal PEB (i.e., July 2010), but, apart from the neurocognitive evaluation already mentioned, the record does not reflect additional treatment for PTSD during your service.

You argued at the Formal PEB that PTSD rendered you unfit, and, in support of that contention, you noted feelings of guilt, incidences of poor memory, poor anger management, marital difficulties, intrusive thoughts, sleep disturbances, and nightmares. But critically, while the Board credited your description of your experiences in combat and the psychological symptoms

you suffered as a result, you have provided no evidence to this Board, and you offered no evidence to the Formal PEB, that symptoms of PTSD left you unable to perform your military duties at or above the minimum acceptable standard. You therefore have not met your burden to prove your unfitness due to that condition.

Finally, regarding your claims of unfitness due to neck and back pain, the Board noted that back pain arising from your roll-over accident was a condition that the MEB referred for a fitness evaluation at the outset of your DES process. Therefore, this condition and the medical treatment records regarding that condition were squarely before both the Informal PEB and Formal PEB when they heard your case in 2010. Through counsel, you made additional arguments in support of your claim for unfitness at the Formal PEB. You made no argument, and offered no evidence, to this Board that the PEB failed to evaluate important evidence regarding your back pain. And after the Formal PEB assessed your back pain not to be unfitting, you affirmatively elected to accept those findings and not exercise your right to appeal. You describe your acceptance of a finding (i.e., separation with severance due to your right shoulder instability alone) with which you, in fact, disagreed as a consequence of poor legal advice, through which you believed that pursuing disability retirement would disqualify you from later obtaining VA medical care and disability compensation. But the Board—even accepting your contention that you would have pursued an appeal had you been better informed—noted that your appeal would have relied on the same evidence that the Informal PEB and Formal PEB had already found failed to support your claim of unfitness due to back pain. Thus, any contention that pursuing an appeal would have led to a more favorable result is purely speculative, especially considering the consistent, unfavorable findings of the Informal and Formal PEBs. 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 claim of unfitness due to back pain. The presumption of regularity therefore compels the Board to find that the PEB's findings, and your separation with severance in accordance with that finding, were not erroneous.

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

