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

[redacted]
Docket No. 9322-25
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [redacted]
XXX XX [redacted] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," dated 25 August 2017 (Kurta Memo)
(c) USD Memo, "Clarifying Guidance to Boards for Correction of Military/Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations," dated 4 April 2024 (Vazirani Memo)
(d) Official Military Personnel File (OMPF)

Encl: (1) DD Form 149 w/attachments
(2) Certificate of Release or Discharge from Active Duty (DD Form 214)
(3) Individual Separation Information, Deployment History, 23 Feb 15
(4) Individual Separation Information, History of Assignments, 23 Feb 15
(5) [redacted] Consolidated NARSUM, 8 Jan 14
(6) NAVMED 6100/1, Automated Medical Board Report Cover Sheet, 22 Oct 13
(7) Disability Evaluation System Proposed Rating re: Petitioner, 29 Apr 14
(8) Findings of the Physical Evaluation Board Proceedings, Ref. [redacted], 12 May 14
(9) Integrated Disability Evaluation System (IDES) IPEB Election of Options re: [Petitioner], 13 May 14
(10) President, Physical Evaluation Board ltr 1850 PEB Index [redacted], subj: Notification of Decision, 29 May 14
(11) Physical Evaluation Board Memo Docket No. 9322-25, subj: Request for Advisory Opinion in Case of [Petitioner], 22 Feb 26

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed Enclosure (1) with the Board for Correction of Naval Records (Board), seeking to have his naval records changed to reflect disability retirement due to post-traumatic stress disorder (PTSD) and cervical radiculopathy, made effective as of his date of discharge.

2. The Board, consisting of [redacted], [redacted], and [redacted], reviewed Petitioner's allegations of error or injustice on 27 May 2026. The Board, pursuant to its regulations and on the basis of the available evidence of record, determined that the corrective action indicated below should be taken with respect to Petitioner's request. Documentary material considered by the Board consisted of Petitioner's application, all materials submitted in support thereof,

relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies. Because Petitioner claims to suffer from post-traumatic stress disorder (PTSD), the Board also considered the application of references (b) and (c) (hereinafter collectively referred to as the Clarifying Guidance) to Petitioner's request.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under law and regulations applicable to the Department of the Navy.

b. Although Petitioner's application was not filed in a timely manner, the Board waived the statute of limitations and considered the case on its merits in the interest of justice.

c. A review of reference (d) reveals that on 14 February 2005, Petitioner commenced active duty service with the U.S. Marine Corps. See enclosure (2).

d. On 27 March 2006, Petitioner deployed to Iraq in support of Operation Iraqi Freedom with the [redacted], as an [redacted]. See enclosures (3) and (4).

e. In August 2006, Petitioner was injured, and a friend was killed, by an improvised explosive device (IED) blast. See enclosure (5).

f. Following the August 2006 blast, Petitioner began complaining of persistent neck pain. Although Petitioner's pain did not require immediate medical intervention, it gradually worsened over the course of years, and he developed left arm weakness. See enclosure (5).

g. Petitioner underwent a C6-C7 anterior cervical decompression and fusion, after which he returned to full duty. However, in early 2013, Petitioner developed neck pain with radiation down the left arm, neither of which were relieved by injections or physical therapy. See enclosure (5).

h. Diagnostic imaging of Petitioner's cervical spine showed a herniated disc at the C5-C6 level. Petitioner therefore underwent a second anterior cervical decompression and fusion in March 2013. However, following his second surgery, Petitioner continued to complain of persistent pain with radiation down the left arm, the treatment of which required narcotic medication. Petitioner was not considered a candidate for follow-on surgery, and his neurosurgeon assessed that he would likely experience persistent pain. See enclosure (6).

i. On 22 October 2013, Petitioner was referred to the Disability Evaluation System (DES) due to: (1) "brachial neuritis or radiculitis"; and (2) post-traumatic stress disorder (PTSD). In connection with that referral, Petitioner's primary care provider assessed that Petitioner's neck injury "impair[ed] his ability to meet the physical demands of the Corps, to include creating a fighting position, wearing [load bearing equipment] and carrying a combat load, riding in a tactical vehicle, and transporting/assembling/firing antitank weapons." Regarding Petitioner's referral to the DES for PTSD, Petitioner's psychiatrist assessed that Petitioner was "non-

deployable due to problems in adapting to stressful circumstances and in establishing and maintaining effective work relationships." See enclosures (5) and (6).

j. On 29 April 2014, the Department of Veterans Affairs (VA) published proposed ratings of Petitioner's claimed disabling conditions. Among those rated conditions were: (1) "left upper extremity cervical radiculopathy status post C6-C7 discectomy/fusion, also claimed as left arm nerve damage," rated as 20% disabling under VA Diagnostic Code (DC) 8510; (2) "status post C5-C6 discectomy/fusion, also claimed as c-spine disc protrusion," rated as 10% disabling under VA DC 5242-5241; and (3) PTSD, rated as 70% disabling under VA DC 9411. See enclosure (7).

k. On 12 May 2014, the Informal PEB found Petitioner unfit for continued service due to left cervical radiculopathy (VA DC 8510 at a 20% disability rating), with "residual pain and sensory deficit" identified as a "Related Category 2 Diagnosis." The Informal PEB did not find Petitioner's PTSD to be unfitting. See enclosure (8).

l. On 13 May 2014, Petitioner accepted his Informal PEB finding. See enclosure (9).

m. On 29 May 2014, in accordance with the 20% disability rating of Petitioner's unfitting condition, the PEB requested his separation from the Marine Corps with severance. See enclosure (10).

n. On 30 August 2014, Petitioner was discharged from the Marine Corps with severance. See enclosure (2).

o. To aid its consideration of Petitioner's case, the Board obtained an Advisory Opinion (AO) from the PEB. The AO is partially favorable to Petitioner's requests, finding that: (1) Petitioner's neck pain (in addition to his cervical radiculopathy) was unfitting at the time of his discharge; but (2) Petitioner's claimed PTSD was not unfitting. The AO states, in part:

> [T]he record shows that duty limitations stemmed not only from the radiculopathy but also from the underlying structural issues in the Petitioner's neck. Not only is the Petitioner's neck specifically mentioned on both of his [limited duty] forms, his neck is repeatedly noted as a source of pain that was poorly responsive to non-narcotic pharmacotherapies. In light of the Petitioner's two spinal fusions and continued radicular symptoms, the [PEB] believes it was unlikely that the Petitioner would have been able to perform common military tasks such as equip himself with protective gear or carry a fighting load due to cervicalgia . . . Therefore, it is the opinion of this panel that the Petitioner was unfit for both his cervical radiculopathy and his cervicalgia, rated by the VA as Status Post C5-C6 Discectomy/Fusion also claimed as C-spine 5242-5241 at 10%, and both are considered combat related (active combat) and incurred in a combat zone. Had this condition been captured at the time of his original adjudication, his combined neck conditions, which due to having a fusion would be stable for rating, would have resulted in a combined disability rating of 30%. In that scenario, the Petitioner would have been placed on the PDRL . . .

> [Regarding his claim of unfitness for PTSD, c]onditions may be referred to the DES when they are not expected to improve in the next 12 months. Although the [narrative summary] (NARSUM) suggests the Petitioner's prognosis for improvement was guarded, this was based in part on the belief that he had been receiving "comprehensive therapy," to include [prolonged exposure] (PE) therapy. However, [redacted] documentation is clear: The Petitioner did not actually begin PE therapy with her, and he was lost to follow-up after only a few partial sessions. Moreover, subsequent documentation noting the Petitioner's symptom improvement on venlafaxine directly contradicts the NARSUM. This evidence not only undercuts the conclusion of the NARSUM but also casts significant doubt on whether the Petitioner's PTSD had met the DES referral criteria for chronicity from the start . . . The Petitioner had no history of formal duty restriction due to mental health symptoms. He was specifically "released w/o [without] limitations" at the time of his last visit with [redacted] The Petitioner was never placed on Light or Limited Duty nor was he formally prescribed duty limitations normally associated with an unfitting mental health condition, such as, but not limited to: weapons handling, standing watch, or working more than an 8-hour workday . . . The Petitioner did not require any escalation in his environment of care (such as referral to inpatient, partial hospitalization) during service. Even if he had required periodic therapy, this would not have been an impediment to deployment as the process of embedding mental health providers at the division and regimental levels had begun several years prior to the Petitioner's separation . . . The record indicates the Petitioner's symptoms were adequately controlled. There are numerous references to the Petitioner's stable mood and anxiety, his overall feeling of "good," and his engagement in activities like participating in an internship, which might have been difficult if his symptoms were poorly controlled. The Petitioner's PCL-5 scores indicate comparatively mild symptom severity . . . While the Petitioner described an incident in his declaration during which he was irritable and unprofessional to a Staff Noncommissioned Officer, a single such incident would be insufficient to characterize an individual as unfit, particularly as there is no indication in the declaration that this outburst was so extreme as to result in referral for a command-directed mental health evaluation or charges. Moreover, as the incident occurred prior to his surgery, the Petitioner's actions could have also been attributable to pain and not just PTSD . . .
>
> In summary, it is the opinion of this panel that the I[nformal] PEB's original finding that the Petitioner was fit for continued naval service due to this PTSD at the time of separation was correct . . .

See enclosure (11).

p. In support of his request, Petitioner avers that the Informal PEB's assessment that his PTSD did not constitute an unfitting condition was premised upon a factual error: that Petitioner had not reported symptoms of PTSD until after his DES referral. Petitioner instead contends that he reported PTSD symptoms to his medical providers and received treatment for them as early as June 2011 (i.e., more than two years before his DES referral),

and the unfitting nature of his symptoms was confirmed by his referring psychiatrist, by an impartial medical review, and by his command.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

In its review of the entirety of Petitioner's application file as described above, the Board concurred with the AO's determination that there was an error in Petitioner's naval record with respect to his separation from the Marine Corps with severance due to cervical radiculopathy alone. Instead, due to both cervical radiculopathy and cervicalgia (neck pain), Petitioner should have been placed on the PDRL as of his date of discharge.

Regarding Petitioner's claim of unfitting PTSD, the Board found that Petitioner failed to meet his burden to prove, by a preponderance of the evidence, that the PEB's determination that his PTSD was not unfitting was 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).

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.

In reaching its decision, the Board fully considered the Clarifying Guidance and the analytical framework outlined in reference (c), 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 this case, Petitioner was honorably discharged and did not request a change to that aspect of his record. Thus, the first step of the Vazirani framework does not apply to Petitioner's case.

The Board then turned to the second step of the Vazirani framework for its analysis of Petitioner's request for disability retirement. Here, the Board separately assessed Petitioner's claim of medical unfitness for continued service due to physical and mental health conditions 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 reaching its decision, the Board observed 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 Physical Evaluation Board (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 or 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 evidence, the Board substantially concurred with the AO and found that Petitioner: (1) clearly suffered from significant structural injuries to his cervical spine (requiring two spinal fusion surgeries at distinct levels) that manifested in both disabling neck pain and left-arm radicular symptoms; and (2) should have been found unfit for both conditions. He suffered his initial injury due to an IED blast in Iraq. Following that initial injury, Petitioner complained of persistent neck pain and eventually developed neurological symptoms (i.e., radiating pain and weakness) into his right arm. He underwent a first spinal fusion at the C6-C7 level (which eventually failed) and then second spinal fusion at the C5-C6 level, after which he never regained satisfactory function and required narcotic medications for pain relief. His providers contemporaneously assessed that Petitioner's neck pain and radiculopathy rendered him unable to carry even standard military load bearing equipment, much less the heavy weapons and anti-tank systems that he, as an Antitank Missileman, would be expected to employ.

Regarding the appropriate disability ratings for Petitioner's neck pain and left cervical radiculopathy, the Board concurred with the AO that those conditions correspond with the VA's ratings for "left upper extremity cervical radiculopathy status post C6-C7 discectomy/fusion, also claimed as left arm nerve damage" (20% disabling under VA DC 8510) and "status post C5-C6 discectomy/fusion, also claimed as c-spine disc protrusion" (10% disabling under VA DC 5242-5241), as reflected in Petitioner's 29 April 2014 proposed rating. Combined, these disability ratings total 30%, and Petitioner's PEB finding should reflect this total.

Regarding Petitioner's contention that his claimed PTSD warranted a PEB finding of unfitness, the Board disagreed with Petitioner's contention and again concurred with the AO. Although Petitioner contends that the Informal PEB ruled against him based, at least in part, upon its perception that PTSD was a post-DES-referral diagnosis and a "makeweight" to increase his odds of securing placement on the PDRL, the AO compellingly details why that condition did not render him unfit (notwithstanding the date that he first reported his symptoms): Petitioner had not meaningfully engaged in recommended therapy in advance of his DES referral, and he improved markedly thereafter due to medication; he was not subject to the kinds of duty restrictions that would be expected of a service member with an unfitting psychological disability; he had no history of safety concerns (either with respect to himself or others); his medications were not deployment-limiting; he required no escalation of treatment (i.e., all of his treatment was outpatient and conservative); and his symptoms were well controlled. Thus, while Petitioner may have subjectively experienced symptoms of PTSD arising from his experiences in combat, the evidence does not show that PTSD prevented him from reasonably performing his required occupational tasks. 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. Petitioner's record simply does not reflect that he fell below that line due to PTSD as of the date of his PEB.

In sum, following its review of the evidence, the Board found that Petitioner failed to meet his burden to prove, by a preponderance of the evidence, that the Informal PEB's determination that PTSD did not render him unfit was erroneous.

Then, the Board turned its attention to whether any of the Department of the Navy's challenged actions in this case were unjust, despite being appropriate under then-applicable standards and procedures. Following its deliberations, the Board found that Petitioner failed to show, by a preponderance of the evidence, that the unique circumstances of his case were such that a formally correct action nevertheless resulted in injustice.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

That Petitioner be placed on the PDRL effective the date he was discharge from active duty (30 August 2014) for the following conditions:

Condition 1:	Cervical Radiculopathy, S/P C5-C6 and C6-C7 Discectomy and Fusion (CR (AC), CZ)
VA Diagnostic Code:	8510
Disability Rating:	20%
Condition 2:	Cervicalgia (CR (AC), CZ)
VA Diagnostic Code:	5242-5241
Disability Rating:	10%

This results in a combined rating of 30%.

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting Narrative Reason for Separation: Disability, Permanent (CR/CZ), Separation Program Designator: As Appropriate; Reentry Code: RE-3P.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's placement on the PDRL and any lawful monies owed.

That a copy of this decision be placed in Petitioner's OMPF.

No other corrections to Petitioner's record.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [redacted]
XXX XX [redacted] USMC

4. That a copy of this decision be placed in Petitioner's OMPF. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of Reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/10/2026

[redacted]