



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

██████
Docket No. 687-26
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.

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").

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that on 26 April 2019, you commenced active-duty service with the U.S. Navy.

Regarding your disciplinary record, on 15 November 2019, you failed to report to your assigned watch and duty section muster after spending the evening drinking with your girlfriend. When you did report, your blood alcohol content was 0.103 percent, as measured by breathalyzer. On 3 December 2019, by non-judicial punishment (NJP), you were found guilty of violations of UCMJ Articles 86 (absence without leave), 92 (failure to obey an order or regulation), and 112 (drunk on duty). In June 2020, you completed Level 1 of the Substance Abuse Rehabilitation Program (SARP).

On 20 September 2020, in violation of then-in-force COVID-related restrictions, you drove off base, patronized multiple prohibited establishments, consumed alcohol, collided with a parked car (causing injury to your passenger), and were arrested for driving under the influence. After pleading guilty in civilian court, on 19 March 2021, you pleaded guilty at NJP to violations of UCMJ Articles 86 (absence from unit, organization, or place of duty), 92 (failure to obey a lawful order or regulation), and 134 (disorderly conduct, drunkenness).

On 8 May 2021, you were notified of the commencement of administrative separation (ADSEP) proceedings against you, and on 3 August 2021, your ADSEP board was held onboard ██████████. At your ADSEP board, it was determined that the evidence supported your separation for misconduct; however, the ADSEP board recommended your retention. Your commanding officer (CO) disagreed and ultimately recommended to Commander, Naval Personnel Command (COMNAVPERSCOM), that you be ADSEPed due to misconduct.

Regarding your medical record, on 30 April 2021, you reported to the medical department of USS Vinson after suffering a fainting episode. You reported concerns regarding a possible seizure in February 2020, but, at the time, your medical provider had “low suspicion of [a] seizure disorder and a neurology consult is not needed at this time.” On 28 November 2021, you suffered an unprovoked seizure while onboard ██████████ and were diagnosed with epilepsy. In March 2022, you were referred to the Disability Evaluation System (DES) for a fitness assessment regarding your epilepsy. On 2 November 2022, the Physical Evaluation Board (PEB) found you unfit for epilepsy, and you accepted your PEB findings the next day. In December 2022, the PEB requested your placement on the Permanent Disability Retired List (PDRL) due to unfitting epilepsy at a 40% disability rating.

On 4 May 2023—seven months after your CO recommended your ADSEP and five months after the conclusion of your DES process—you were discharged due to “Misconduct – Serious Offense” with a General (Under Honorable Conditions) characterization of service.

In your application to this Board, you requested that your naval records be changed to reflect your placement on PDRL (as requested by the PEB), made effective as of your discharge from active duty, and that you receive all associated back pay and benefits dating to the effective date of your disability-based discharge. In your application, you contend that: (1) you were unfairly ADSEPed before your PEB process could be completed; (2) you do not believe that your NJPs should override the requirement that the Navy diagnose and treat serious medical conditions, and properly evaluate their impact on fitness; and, (3) post-service, you were diagnosed with depression, which you contend should have been diagnosed during service and considered in connection with your PEB.

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 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.

The Board thus considered 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.

In reaching its decision, the Board noted 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 record, the Board recognized that the PEB found you unfit due to epilepsy and requested your placement on PDRL with a 40% disability rating. And in your application, you do not contest the PEB's finding of unfitness regarding your epilepsy or the disability rating associated with it. Thus, regarding your diagnosed epilepsy, the Board deferred to the PEB's finding of unfitness.

Although your application did not explicitly contend that depression (diagnosed post-service by the VA) rendered you unfit for military service, the Board, of its own accord, chose to address that question.

The Board considered that, no later than 5 November 2024, the VA rated you as 70% disabled due to service-connected chronic adjustment disorder with mixed anxiety and depressed mood, effective 7 July 2023. 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 have been assigned a VA rating of 70% for your post-service adjustment disorder diagnosis, this rating alone is not conclusive evidence that you were unfit for duty at the time of your discharge.

The Board noted that your case file contained no records, apart from your own bare contentions regarding the potential impact of military stressors and your epilepsy diagnosis upon your mental health, that corroborate any claim that you were psychologically unfit at the time of your discharge. Your case file contains no in-service mental health records at all (apart from those associated with SARP), and there is no record evidence that you were diagnosed with any psychiatric condition during your time in the Navy. You did not raise any mental health-related concerns in the context of your DES process, and you chose not to contest the PEB's finding that you were unfit for service only due to epilepsy. The Board was thus left entirely without contemporaneous medical evidence with which to assess your state of mental health while in service and, in turn, your claims of error or injustice. Finally, because you were never referred into the DES for a mental health-related condition, the presumption of regularity compels the Board to conclude that none of your in-service medical providers assessed that your then-existent psychiatric conditions (if any) met the criteria for referral and fitness evaluation. Upon considering all of the above, the Board concluded that the evidence failed to show that a mental health condition rendered you unfit for service at the time of your discharge.

Finally, the Board addressed your contention that your ADSEP was improper, and, instead, you should have been placed on PDRL for unfitting epilepsy. As an initial matter, the Board noted that (contrary to your contention), you were not ADSEPed prior to the conclusion of the DES process. The record reflects that the PEB found you unfit for service due to epilepsy in November 2022. In December 2022, the PEB requested your placement on PDRL by sending a Notification of Decision to the Chief of Naval Personnel, thereby marking the formal end to your DES process. You were ADSEPed in May 2023—five months after your DES process had concluded. Therefore, your contention that you were ADSEPed prior to the conclusion of your DES process is incorrect. With this established, the record reflects that in connection with your ADSEP, COMNAVPERSCOM—the designated Separation Authority for dual processing cases, such as yours—was informed of both your misconduct and your DES process. And although COMNAVPERSCOM's formal approval of your ADSEP does not appear in your case file before this Board, the presumption of regularity compels the Board to conclude that COMNAVPERSCOM properly exercised his authority and discretion to direct your ADSEP, in lieu of disability retirement (as no contrary evidence appears in the record). On the basis of the above, the Board found that you failed to meet your burden to prove, by a preponderance of the evidence, that COMNAVPERSCOM's approval of your ADSEP, in lieu of disability retirement, was improper or unauthorized. The Board thus found no error in the Navy's actions in this respect.

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 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. 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.

In consideration of the foregoing determinations and regarding your request for discharge relief (in the form of an upgrade to your characterization of service and a change of your narrative reason for separation), the Board determined that you have not exhaust your administrative remedies with the Department of the Navy. Specifically, you have not yet exhausted all of your administrative remedies by petitioning the Naval Discharge Review Board (NDRB). Your request to the NDRB affords you the maximum opportunity to have your request considered for an upgrade of your characterization of service.

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

