

Appx1 to Appx5078
No. 24-2306

**United States Court of Appeals
for the Federal Circuit**

WILLIAM OLAS BEE,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims
No. 1: 21-cv-01970-PSH, Judge Philip S. Hadji

APPENDIX (Appx1 to Appx5078)

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In the United States Court of Federal Claims

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 21-1970

(Filed: August 23, 2024)

ORDER

On March 16, 2022, Plaintiff filed a Motion for Judgment on the Administrative Record (ECF 20), and on May 11, 2022, the Government filed its Response and Cross Motion for Judgment on the Administrative Record and Motion to Dismiss (ECF 23). On joint motion, the Court subsequently remanded this case to the Board for Correction of Naval Records (BCNR) for further proceedings. ECF 36. The BCNR issued a new decision on May 5, 2023, and the parties subsequently filed a new round of dispositive briefing before this Court (ECF 47; ECF 54). Accordingly, Plaintiff's Motion for Judgment on the Administrative Record (ECF 20) and the Government's Cross Motion for Judgment on the Administrative Record and Motion to Dismiss (ECF 23) are **DENIED** as moot.

IT IS SO ORDERED.

s/ Philip S. Hadji
PHILIP S. HADJI
Judge

In the United States Court of Federal Claims

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 21-1970

Filed: August 23, 2024

Darryl H. Steensma, Kyle R. Jefcoat, Michael Clemente, Ryan T. Giannetti, Ashley K. Gebicke, Latham & Watkins LLP, San Diego, California and Washington, D.C., and Esther Leibfarth, Rochelle Bobroff, Matthew Handley, National Veterans Legal Services Program, Washington, D.C., for Plaintiff.

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OPINION AND ORDER

HADJI, Judge.

Following selfless service to the Nation, which included four deployments to Afghanistan, Plaintiff voluntarily separated from the Marine Corps in April 2013 as part of the “Voluntary Separation Program” for which he was paid a bonus of \$106,956.18 to separate. AR 9, 195. He now brings this action asking the Court to “correct” his records to reflect that he was medically retired, rather than voluntarily separated, and thus entitled to additional compensation under 10 U.S.C. § 1201. Before the Court are Plaintiff’s Motion for Judgment on the Administrative Record (ECF 47), the Government’s Cross-Motion for Judgment on the Administrative Record (ECF 54), and the Government’s Motion to Dismiss pursuant to Rule 12(b)(1) (ECF 54). For the following reasons, the Government’s Cross-Motion for Judgment on the Administrative Record is **GRANTED**, and Plaintiff’s Motion for Judgment on the Administrative Record and the Government’s Motion to Dismiss are **DENIED**.

BACKGROUND

Plaintiff served in the Marine Corps from 1999 to 2013. AR 50-51, 224. His primary military occupation specialty (PMOS) was initially that of infantry riflemen (0311). AR 60, 1039. Over the course of his service, he deployed to Afghanistan four times. AR 194, 311. During his third deployment, Plaintiff suffered a significant head injury in combat, exhibiting “[p]otential [Traumatic Brain Injury (TBI)] with persistent symptoms.” AR 79. During his fourth deployment, he suffered extreme stress and trauma from witnessing the deaths of fellow Marines and was knocked unconscious from the detonation of multiple improvised explosive devices. AR 9, 15, 35-36. Due to the severity of his wounds, Plaintiff was medically evacuated from Afghanistan to Germany. AR 1, 9, 36. Following his return from his final deployment in June 2010, Plaintiff was diagnosed with TBI and Post-Traumatic Stress Disorder (PTSD). AR 173-78. He was placed on limited duty status until no later than December 2010,¹ although he continued to serve as an infantry squad leader and mortar section leader during that time. AR 1302-06, 1307-1311.

In October 2010, Plaintiff was promoted to staff sergeant (E-6) and his PMOS changed from rifleman (0311) to infantry unit leader (0369). AR 60, 383. He served for a short time as his battalion’s substance abuse coordinator until mid-November 2010, when he transferred to the Marine Corps Field Medical Training Battalion-East. AR 383, 1314. There, he served as a Military Instructor for thousands of Navy medical and religious personnel slated to serve with Marine Corps units worldwide. AR 1314, 1316, 1321-1326. During his assignment at the Field Medical Training Battalion, he received fitness reports documenting his “outstanding” professional and military performance and ranking him in the upper half of the Marines in his reporting group. AR 2, 385-401.

More specifically, his 2011 fitness report listed various billet accomplishments and documented that Plaintiff: (1) developed field exercises to better train Navy personnel that more accurately represented tactics techniques and procedures used in operational theatres; (2) trained 1347 students in offensive/defensive attacks, ambushes, and land navigation field exercises and hikes; (3) completed the Formal School Instructor Course; (4) personally lead, mentored, and trained 314 sailors for duty in the Marine Operating Forces; (5) led platoons on 20 conditioning hikes totaling 100 miles; and (6) maintained flawless accountability of personnel, weapons, and equipment for his platoons. AR 1316; *see also* AR 511. Plaintiff’s company commander not only recognized him as a “top performer” whose combat and infantry experience served as “the backbone for the highly successful training program provided to the Hospital Corpsmen as we prepare them for combat duty with the Marine Corps” but “enthusiastically recommend[ed him] for promotion and increased responsibility.” AR 1320. Plaintiff’s reviewing officer ranked him above 11 of his peers, stating that his “leadership skills, instructional ability, and attention to detail are

¹ The Government argues that Plaintiff’s limited duty status terminated in October 2010. ECF 54 at 55. Plaintiff argues that it terminated in December 2010. ECF 47 at 42.

truly impressive” and noting that he “continues to excel in all aspects of job performance.” AR 1320, 511.

Similarly, Plaintiff’s 2012 fitness report noted that, among other things, Plaintiff: (1) personally led, mentored, and trained over 268 students in combat leadership, offensive and defensive operations, land navigation, weapons handling, close order drill, and physical training; (2) trained and mentored over 1,200 students in his role as the combat marksmanship coach; and (3) assisted in the development and refinement of a field exercise that reflected “more realistic and current tactics, techniques, and procedures used in the Fleet Marine Force.” AR 1321. His leadership commended him as “an outstanding Marine” who performed in a “highly exemplary manner” and “[s]tands ready today to be a [Gunnery Sergeant].” AR 1325.

In October 2012, Plaintiff requested to separate early from the Marine Corps through the Voluntary Separation Program, four days after the program was announced. AR 9, 480. In January 2013, as part of the separation process, Plaintiff underwent a Department of Veterans Affairs (VA) Compensation and Pension exam (C&P exam) by Dr. Roy Vogel, who confirmed Plaintiff’s diagnoses for TBI and PTSD and further diagnosed him with Post-Concussion Syndrome/Cognitive Impairment, Primary Insomnia, Generalized Anxiety Disorder, Panic Disorder with Agoraphobia, and Major Depressive Disorder. AR 8, 56-65. He assigned Plaintiff a nominal score indicating “[s]ome impairment in reality testing or communication; or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood.” AR 106.

Continuing the separation process, Plaintiff underwent a separation physical in February 2013. AR 188. During that exam, Plaintiff reported having an “excellent general overall feeling.” AR 8, 99. He reported “[n]o decreased functioning ability” and “[n]o sensory disturbances,” *id.*, and he was observed as having a “normal” affect. AR 100. He was “released w/o limitations,” AR 103, and separated with a RE-1A code, indicating that he was qualified for service, separation, or to reenlist. AR 193, 481. He was honorably discharged from service on April 1, 2013, and received \$106,956.18 in separation pay pursuant to the Voluntary Separation Program. AR 9, 195.

In October 2013, the VA issued a Rating Decision based on a review of records from the January C&P exam. AR 104. The decision found that Plaintiff’s TBI and PTSD were “service connected” and rated each condition at 70%. AR 104-15. Plaintiff was also rated for other conditions and received an overall disability rating of 100%. AR 115. Several years later, Plaintiff also underwent an exam by a private physician, Dr. Michael Blumenfield, who opined that Plaintiff was not fit for service at the time of his discharge. AR 163-66.

In April 2018, Plaintiff applied to the Board for Correction of Naval Records (the Board) requesting that his naval records be corrected to reflect that his April 1, 2013, discharge was the result of a medical retirement rather than a voluntary separation. AR 29. The Board obtained advisory opinions from the Senior Medical Advisor to the Secretary

of the Navy Council for Review Boards (CORB) and the Director of the CORB, who recommended that Plaintiff be denied relief. AR 5-8. These opinions were provided to Plaintiff in advance of the Board's decision, and Plaintiff submitted briefing to the Board in July 2019. AR 567-584.

The Board denied Plaintiff's claim in August 2019. AR 1-3. In October 2021, Plaintiff filed his original complaint in this case alleging that the Board's decision was arbitrary, capricious, or otherwise contrary to law. ECF 1. The parties filed cross motions for judgment on the administrative record (ECF 20, 23), and the Government moved to dismiss the complaint (ECF 23). Following oral argument, the parties sought, and the Court granted, a remand to the Board. *See* ECF 36. The Board obtained another advisory opinion from its Physician Advisor, AR 509-519, and Plaintiff submitted a supplemental brief. AR 537-53.

On May 5, 2023, the Board issued a new decision, which again denied Plaintiff's request for corrective action. AR 470-488. On July 7, 2023, Plaintiff filed an amended complaint (ECF 42), and the parties filed new cross motions for judgment on the administrative record (ECF 47, 54). The Government also filed a Motion to Dismiss pursuant to Rule 12(b)(1) (ECF 54).

DISCUSSION

This opinion is divided into two parts. Part I addresses the threshold jurisdictional statute of limitation argument raised in the Government's Motion to Dismiss. Part II addresses the merits of Plaintiff's case.

I. The Court has Jurisdiction over Plaintiff's Claims

The Court begins by addressing Defendant's Motion to Dismiss the Complaint as untimely under the pertinent six-year statute of limitations. Rule 12(b)(1) permits dismissal for lack of subject-matter jurisdiction.² This Court's jurisdiction is dependent on an unequivocal waiver of sovereign immunity by the United States. *United States v. Testan*, 424 U.S. 392, 399 (1976). The plaintiff bears the burden to demonstrate that jurisdiction is proper by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). When considering a motion to dismiss under Rule 12(b)(1), "a court must accept as true all undisputed facts asserted in the plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff." *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). If the Court determines that it lacks subject-matter jurisdiction, it must dismiss the action. Rule 12(h)(3); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

Under the Tucker Act, "[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years

² Court of Federal Claims Rule 12(b)(1) is the same as Federal Rule of Civil Procedure 12(b)(1). *Compare* RCFC 12(b)(1) *with* Fed. R. Civ. P. 12(b)(1).

after such claim first accrues.” 28 U.S.C. § 2501. Section 2501 “is jurisdictional in nature and, as an express limitation on the waiver of sovereign immunity, may not be waived.” *Hart v. United States*, 910 F.2d 815, 818-19 (Fed. Cir. 1990).³ Nor may the Court consider whether certain equitable considerations warrant extending the limitations period under Section 2501. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134 (2008).

Where, as here, “a service member has not been considered or has been rejected for disability retirement prior to leaving active service, the service member can pursue disability retirement before a [Record Correction B]oard.” *LaBonte v. United States*, 43 F.4th 1357, 1361 n.4 (Fed. Cir. 2022) (citing *Chambers v. United States*, 417 F.3d 1218, 1225 (Fed. Cir. 2005)). In such cases, the general rule is that the six-year statute of limitations runs from “[t]he decision by the first statutorily authorized board that hears or refuses to hear the claim[.]” *Chambers*, 417 F.3d at 1224. But there is an exception—the *Real* exception—which applies when “the veteran’s knowledge of the existence and extent of his condition at the time of his discharge [is] sufficient to justify concluding that he waived the right to board review.” *Chambers*, 417 F.3d at 1226 (quoting *Real v. United States*, 906 F.2d 1557, 1562 (Fed. Cir. 1990)). Stated differently, the *Real* exception applies when the service member knew at the time of his separation from the military, “that he was entitled to disability retirement due to a permanent disability that was not a result of his intentional misconduct and was service-connected.” *Chambers*, 417 F.3d at 1226. In such a case, the statute of limitations runs from the time of discharge. *See id.*

It is undisputed that Plaintiff had been diagnosed with TBI and PTSD and was aware of those diagnoses immediately before discharge. However, caselaw from this Court suggests that mere awareness of a disability is insufficient to invoke the *Real* exception. *See Johnson v. United States*, 123 Fed. Cl. 174, 179 (2015). Indeed, for a claim to accrue at discharge, *Real* itself suggests that a service-member must “underst[and] the full extent” of his disabilities. *See Real*, 906 F.2d at 1563 (declining to apply the *Real* exception where “no one knew exactly what was wrong with [Plaintiff] or understood the *full extent* of his mental problem at the time of his discharge” (emphasis added)). Here, Plaintiff likely did not understand the “full extent” of his TBI and PTSD before discharge because the degree of his disability—a 70% rating for PTSD and a 70% rating for TBI (100% total)—was not established until six months after his separation. In fact, his medical evaluations before discharge repeatedly rated him “fit for duty” with no limitations. AR 179-81. As such, it is reasonable to conclude that these positive evaluations, whether accurate or not, led Plaintiff

³ In the last twenty years, the Supreme Court has repeatedly admonished courts for attaching jurisdictional labels to minor procedural requirements that can be characterized as “claim-processing rules.” *See Kontrick v. Ryan*, 540 U.S. 443, 456 (2004). However, the Supreme Court has maintained that Section 2501 is “more absolute” in nature, suggesting that it remains a prerequisite for Tucker Act jurisdiction. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134-35 (2008). As such, this Court has continued to use Rule 12(b)(1) to resolve questions of timeliness under the Tucker Act. *See, e.g., Henderson v. United States*, 152 Fed. Cl. 460, 465 (2021).

to believe that his disabilities were of a less serious nature and that he was not “entitled to disability retirement.”

Relatedly, the Court has also refused to apply the *Real* exception in cases where the service member was generally able to perform his duties at the time of discharge. For example, in *O’Hare v. United States*, the plaintiff was aware of his injury and diagnosis and had been placed on limited duty at the time of discharge. 155 Fed. Cl. 364, 373 (2021). Nevertheless, the Court declined to find that the veteran “knew he had a *permanent* disability that *entitled* him to disability retirement” because “he was able to perform his assigned duties, at least at certain times, and had reason to expect continued recovery.” *Id.* The same is true here. Before his separation, Plaintiff was serving as an instructor for religious and medical personnel, and his fitness reports indicate that he performed adequately in this assignment. Given the general stability of Plaintiff’s situation immediately before discharge, the Court is not convinced that he was aware “that he was entitled to disability retirement.”

This is not to decide the ultimate merits question of Plaintiff’s entitlement to disability retirement, which concerns Plaintiff’s “unfitness to perform the duties of office, grade, rank or rating.” Secretary of the Navy Instruction (SECNAVINST) 1850.4E, § 3301. As discussed below, the fact that a service member performs adequately within a particular billet does not necessarily mean that he is able to perform the broader duties of his office grade, rank, or rating. *See Kelly v. United States*, 157 Fed. Cl. 114, 125 (2021) (“[A] mere review of whether a member was adequately performing duties—regardless of what those were—immediately before separation is not sufficient.”). For purposes of what Plaintiff knew or should have known, however, Plaintiff’s adequate performance in his billet immediately before discharge weighs heavily against him knowing that he was entitled to medical retirement.

Having determined that the *Real* exception does not apply, the Tucker Act’s six-year statute of limitations runs from “[t]he decision by the first statutorily authorized board that hears or refuses to hear the claim[.]” *Chambers*, 417 F.3d at 1224. Because the Board denied Plaintiff’s claim on August 5, 2019—less than six years ago—Plaintiff’s claim is timely.

II. The Board’s Decision Was Well-Reasoned, Consistent with Law, and Supported by Substantial Evidence

Turning to the merits, the Court reviews the Board’s decision “to determine whether it is arbitrary, capricious, unsupported by substantial evidence, or contrary to law.” *Lewis v. United States*, 458 F.3d 1372, 1376 (Fed. Cir. 2006). The Court does not reweigh the evidence, but rather considers whether the conclusion under review is supported by substantial evidence. *Riser v. United States*, 97 Fed. Cl. 679, 683-84 (2011). If the Board considered the relevant evidence and came to a reasonable conclusion, the Court will not disturb the Board’s decision. *Id.* This lenient standard of review is violated, however, where the Board “entirely failed to consider an important aspect of the problem, offered an

explanation for its decision that runs counter to the evidence before the [Board], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

To qualify for disability retirement, a service member must (1) be determined “unfit to perform the duties of the member’s office, grade, rank, or rating because of a physical disability” and (2) have at least 20 years of service *or* a disability rating greater than 30%. *Kelly v. United States*, 69 F.4th 887, 889 (Fed. Cir. 2023) (citing 10 U.S.C. § 1201). “A Service member shall be considered unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties)[.]” Department of Defense Instruction (DoDI) 1332.38, E3.P3.2.1. In determining whether a service member can reasonably perform his or her duties, the following four factors should be considered: “(1) common military tasks, *i.e.*, whether the member is unable to reasonably perform routine assignments expected of his or her office, grade, rank or rating; (2) physical readiness/fitness tests, *i.e.*, whether the member's condition prohibits him or her from taking all or part of physical readiness/fitness tests; (3) deployability, *i.e.*, whether the member’s condition prevents him or her from being positioned outside the [contiguous United States] for an unspecified amount of time; and (4) special qualifications, *i.e.*, whether the member’s condition causes the loss of any specialized qualifications.” *Ford v. United States*, 170 Fed. Cl. 458, 469 (2024) (citing SECNAVINST 1850.4E, § 3304).⁴ The first factor, common military tasks, is dispositive on the ultimate question of the member’s unfitness. By contrast, the remaining three factors cannot be used individually as the sole basis for a finding of unfitness. *See* SECNAVINST 1850.4E, § 3307.

The remainder of this section is organized into three parts. First, the Court briefly summarizes the Board’s decision. Second, the Court addresses Plaintiff’s argument that the Board committed clear legal error by failing to apply various laws and regulations. The Court pays particular attention to Plaintiff’s argument that the Board withheld liberal consideration—a thinly veiled request for the Court to reweigh the evidence. Third, the Court addresses Plaintiff’s argument that the Board either improperly relied on or discounted key pieces of evidence—an explicit request for the Court to reweigh the evidence.

A. Overview of the Board’s Decision

The Board’s comprehensive, 19-page decision correctly states that “the sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of

⁴ The Board must apply the regulations that existed at the time of the member’s discharge. *Chambers*, 417 F.3d at 1227 (“[T]he Army regulations in effect at the time of Chambers’ discharge in 1970, rather than current regulations, guide our analysis.”). At the time of Plaintiff’s discharge, DoDI 1332.38, E3.P3.2.1. and SECNAVINST 1850.4E were controlling (SECNAVINST 1850.4E was replaced by SECNAVINST 1850.4F on June 17, 2019).

disease or injury incurred or aggravated while entitled to basic pay.” AR 482, 488 (citing SECNAVINST 1850.4E, § 3301). Applying this standard, the Board found that although Plaintiff suffered from PTSD and TBI during service, “[t]he evidence simply does not support [the] contention that [Plaintiff was reasonably unable to perform the duties of [his] office, grade, rank, or rating as a result of those conditions.” AR 488.

The Board’s assessment of Plaintiff’s fitness is supported by substantial evidence. Under the Administrative Procedure Act (APA), the Court reviews the Board’s factual findings for substantial evidence. *OSI Pharms., LLC v. Apotex, Inc.*, 939 F.3d 1375, 1381–82 (Fed. Cir. 2019). “The substantial evidence standard asks ‘whether a reasonable fact finder could have arrived at the agency’s decision,’ and ‘involves examination of the record as a whole, taking into account evidence that both justifies and detracts from the agency’s decision.’” *Id.* (quoting *In re Gartside*, 203 F.3d 1305, 1312 (Fed. Cir. 2000)).

Analyzing Plaintiff’s numerous fitness reports from the years directly preceding his voluntary separation, the Board found that they “conclusively demonstrated” that Plaintiff was “capable of performing the duties of [his] office, grade, rank, or rating despite [his] medical conditions.” AR 485. Significantly, the Board cited his 2011 and 2012 fitness reports, noting that they “reflect that [he] successful[ly] trained thousands of Navy Medical Department and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps, which specifically included land navigation skills.” AR 480. The Board recognized that Plaintiff’s leadership lauded him for “maintaining ‘flawless accountability of personnel, weapons, and equipment for [his] platoons,’ for [his] ‘leadership, professional knowledge, and meticulous attention to detail [which] earned [him] the respect and admiration of students and staff[],’ and for developing ‘field exercises that more accurately represent current tactics, techniques, and procedures currently being experienced in current operational theaters.’” *Id.* The Board also quoted Plaintiff’s company commander’s assessment of him from his 2012 fitness report:

[A]n outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailor and Marines at [the Field Medical Training Battalion]. His performance has had force-wide impact and significantly enhanced the quality, character, capabilities, and attitudes of thousands of Hospital Corpsmen, Religious Program Specialists, Chaplains, and Navy Medical Department Officers now serving with the Marine Corps operating forces world-wide. AR 485.

Capturing the crux of the case, the Board stated to Plaintiff: “The most compelling evidence that you were fully capable of performing the duties of your office, grade, rank, or rating was that you were, in fact, capably performing the duties of your office, grade, rank, or rating as an Instructor at [the Field Medical Training Battalion].” AR 483. The bulk of Plaintiff’s arguments, addressed in detail below, essentially ask the Court to ignore the Board’s conclusion that Plaintiff was successfully performing in his office, grade, rank,

and rating prior to his voluntary retirement and reweigh the evidence in Plaintiff's favor. As explained below, the Court declines to do so.

B. The Board Complied with Controlling Law

1. 10 U.S.C. § 1552(h) & Liberal Consideration

First, Plaintiff contends that the Board's "most obvious legal violation" was its failure to treat his application with "liberal consideration." ECF 47 at 29. The liberal consideration standard was first articulated in 2014 through a memorandum issued by Secretary of Defense Chuck Hagel. Acknowledging that "PTSD was not recognized as a diagnosis at the time of service" for Vietnam veterans, the Hagel Memo instructed correction boards to give liberal consideration to "petitions for changes in characterization of service" when the former service member's records indicated one or more symptoms of PTSD. Memorandum for Secretaries of the Military Departments from Secretary of Defense Charles Hagel (Sept. 3, 2014) (Hagel Memo) at 1, 3. Under the Hagel Memo, liberal consideration was limited to review of discharge characterizations—*i.e.*, "Honorable," "General (Under Honorable Conditions)," and "Under Other Than Honorable Conditions." *Doyon v. United States*, 58 F.4th 1235, 1238 (Fed. Cir. 2023).

Additional guidance was issued on August 25, 2017, by Under Secretary of Defense Anthony Kurta, for the purpose of expanding on the Hagel Memo and promoting "greater uniformity amongst the review boards." Memorandum for Secretaries of the Military Departments from Under Secretary of Defense for Personnel and Readiness (Performing the Duties of) Anthony Kurta (Aug. 25, 2017) (Kurta Memo) at 1. Unlike the Hagel Memo, the Kurta Memo did not limit its guidance to discharge characterization upgrades but extended to "any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from General to Honorable characterizations." *Id.* at 3.

On December 12, 2017, Congress codified the liberal consideration standard into the Board's authorizing statute by amending 10 U.S.C. § 1552 to add sub-section (h). *See* National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 § 520, 131 Stat. 1283, 1379 (2017). Section 1552(h) states in full:

(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, and whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(1) shall—

(A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

10 U.S.C. § 1552(h).

The scope of liberal consideration under 10 U.S.C. § 1552(h) and the Kurta memo was recently addressed by the Federal Circuit in *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023). There, the plaintiff, who had been discharged due to a personality disorder, requested that his records be corrected to reflect a medical discharge due to service-related PTSD. *Id.* at 1237. The Federal Circuit discerned two separate issues, the first being whether the plaintiff's military records should be changed to reflect a discharge due to PTSD instead of a personality disorder or, more specifically, whether the narrative reason for his discharge, as represented in his DD-214 form, should be corrected from the "BUPERSMAN Art. C-10310, 265" separation code (*i.e.*, unsuitability due to personality disorder) to the "BUPERSMAN C-10305" separation code (*i.e.*, separation due to physical disability). *Id.* at 1244. The second issue, which the Federal Circuit declined to address, involved a larger underlying dispute about whether the plaintiff was unfit, rather than unsuitable,⁵ for service at the time of his discharge from the Navy and therefore entitled to disability retirement. *Id.* at 1248.

Regarding the first issue, the Federal Circuit held that the liberal consideration applied to the plaintiff's request to correct his DD-214 to reflect a discharge due to PTSD instead of a personality disorder. *Id.* at 1237. According to the Federal Circuit, liberal consideration under 10 U.S.C. § 1552(h) and the Kurta memo is not limited to misconduct-based discharge upgrades or modifications but also applies to requests seeking to correct the narrative reason for a service member's discharge. *Id.* at 1247-48. Because Plaintiff's request to change his DD-214 was "a challenge to the accuracy of the narrative reason listed on his DD-214 form," the Federal Circuit concluded that the Board was required to review the plaintiff's application with liberal consideration. *Id.* at 1244.

⁵ Under controlling naval regulations at the time of plaintiff's discharge, service members could be "separated [from military service], by reason of *unsuitability*, with an honorable or general discharge" for, among other reasons, character and behavioral disorders "[a]s determined by medical authority." Military disability retirement, on the other hand, is governed by 10 U.S.C. § 1201, which provides: "[U]pon the Secretary's determination that a service member is 'unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay,' the service member may retire for disability." *Chambers*, 417 F.3d at 1223, 1224 (quoting 10 U.S.C. § 1201(a)).

The Federal Circuit’s analysis ended there. *Id.* at 1248. Although the Federal Circuit acknowledged the second “underlying dispute about whether Mr. Doyon was unfit, rather than unsuitable, for service at the time of his discharge from the Navy,” the Federal Circuit determined that “[t]his unfitness dispute between the parties is not properly before us at this stage and can be addressed, if necessary, on remand.” *Id.* The Federal Circuit emphasized that the case was only “narrowly about correcting Mr. Doyon’s military records to reflect a discharge due to PTSD instead of a personality disorder.” *Id.*

The instant case arrives in a different posture and is purely limited to the second, underlying issue in *Doyon*—whether Plaintiff was unfit for service at the time of his discharge from the Navy. There is no partial relief requested in this case—that is, Plaintiff does not ask that his DD-214 read anything other than medical retirement and *unfitness* due to PTSD and TBI. Unlike in *Doyon*, Plaintiff does not quarrel with the accuracy of the narrative reason for his discharge (voluntary separation), nor does he ask that the Board correct this reason regardless of whether it grants his disability retirement claim. Ultimately, Plaintiff’s request to correct his records, including his DD-214, is entirely coextensive with his disability retirement claim.

The question remains whether liberal consideration applies to fitness determinations. According to Plaintiff, a straightforward application of *Doyon* suggests that it does. *Doyon* held that liberal consideration under 10 U.S.C. § 1552(h) applies to requests seeking to correct the narrative reason for a service member’s discharge. *Doyon*, 58 F.4th at 1248. And here, Plaintiff essentially seeks to change the “Narrative Reason for Separation” block on his DD-214 from “FORCE SHAPING-VSP” to “medical retirement.” AR 193; Am. Compl. at 46. As Plaintiff’s fitness is a factual determination necessary to correcting the narrative reason for discharge, liberal consideration would necessarily extend to that question as well. *See Doyon*, 58 F.4th at 1244 (“[A] veteran’s challenge to the recorded narrative reason for discharge necessarily encompasses the factual determinations necessary to correct or maintain the narrative reason.”). On the other hand, the Government insists that liberal consideration does not apply to fitness determinations, relying in part on a memo issued on April 4, 2024, by Ashish S. Vazirani, the Under Secretary of Defense, Personnel and Readiness (Acting) (Vazirani Memo). ECF 70-1 at 3-4.⁶ The Vazirani Memo states that “the application of liberal consideration does not apply to fitness determinations” and that corrections boards “should not apply liberal consideration to retroactively assess the Applicant’s medical fitness for continued service prior to discharge.” *Id.* at 31.

Even accepting Plaintiff’s argument that liberal consideration applies to fitness determinations, which the Federal Circuit declined to answer in *Doyon*, the Court is

⁶ The Vazirani Memo was issued after the decision on review and, thus, was not binding on the Board. ECF 70-1 at 31; AR 3. Nor is it due any deference from the Court in interpreting Section 1552(h). *See Loper Bright Enters. v. Raimondo*, 144 S.Ct. 2244, 2273 (2024) (“... courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous”).

satisfied that the Board liberally considered the evidence submitted by Plaintiff in support of his unfitness. Although the Board did not use the phrase “liberal consideration” in its decision, the presence or absence the phrase “liberal consideration” should not dictate whether liberal consideration was actually applied. Indeed, the Federal Circuit has regularly eschewed “magic words” requirements. *See, e.g., Pickett v. McDonough*, 64 F.4th 1342, 1347 (Fed. Cir. 2023) (“[T]here must be some indication that the proper analysis under the regulation occurred, but we hold that § 3.156(b) does not require the VA to invoke certain “magic words” in its decision). Here, the Board issued a comprehensive 19-page opinion that fully grappled with the evidence both for and against Plaintiff’s claim. This is not a case, for example, where the Board failed to consider and weigh medical evidence submitted by the claimant, including opinions by civilian doctors post-dating a veteran’s service. *See Labonte v. United States*, No. 18-1784C, 2023 WL 3197825, at *9 (Fed. Cl. May 2, 2023) (finding that the Board withheld liberal consideration where it “did not wrestle with or seek to explain why [certain] medical opinions should not be followed); *Hassay v. United States*, 150 Fed. Cl. 467, 484 (2020) (finding the Board withheld liberal consideration where it did not consider the VA’s determination that the veteran’s mental health condition was connected to military service). Indeed, the Board fully wrestled with and explained its reasoning for discounting the medical evidence submitted by Plaintiff—particularly, the opinions of Dr. Blumenfield and Dr. Vogle. AR 478-81. The Board provided detailed analysis of each opinion but ultimately found that such evidence was less probative on the question of fitness than Plaintiff’s fitness reports showing that Plaintiff was successfully performing his duties prior to discharge. *Id.* Nor is this a case where the Board failed to consider personal testimony submitted by the claimant. *See Hassay*, 150 Fed. Cl. at 484 (2020) (finding the Board withheld liberal consideration where it did not have in front of it the “transcript of [plaintiff’s] testimony before the Board of Veterans Appeals ... describ[ing] the assaults and harassment”). The Board duly considered affidavits submitted by Plaintiff and his wife but, again, did not find that such testimony reflected upon Plaintiff’s ability to perform the duties of his office, grade, rank, or rating. AR 483. Although liberal consideration may in certain cases alleviate a claimant from the normal burden of proof, it does not prevent the Board from weighing the evidence or discounting evidence in support of Plaintiff’s disability retirement claim if the Board in fact provides articulable and legitimate reasons for doing so.

Because the Board applied liberal consideration in all but name, to the extent that it was required to apply liberal consideration, the Court finds it did so. In fact, the Court strains to understand how the Board could more liberally consider Plaintiff’s disability retirement claim short of simply abdicating its fact finder duties and taking all evidence of Plaintiff’s unfitness as irrefutable without further examination or weighing of contrary evidence. More generally, liberal consideration is an invitation to robustly engage with the evidence specifically affecting the veteran, not run away from it. *See Doyon*. And the Court finds that the Board accepted that invitation here.

2. *DoDI 1332.38 & SECNAVINST 1850.4E*

Plaintiff further argues that the Board opened its decision by broadly disclaiming its intention to not follow DoDI 1332.38 and SECNAVINST 1850.4E. ECF 47 at 28-29. This assertion appears to be based on the Board's statement that "[n]either DoDI 1332.38 nor SECNAVINST 1850.4E applies to this Board; rather, they provide regulatory guidelines for the Board to use in assessing whether there exists an error or injustice in your naval record." ECF 47 at 28; AR 472. However, this language, while perhaps inartful, hardly evidences an intention to not follow controlling legal authority. The Court reads such language as simply making the modest and correct point that the regulations at issue were intended to be implemented by the Physical Evaluation Board (PEB) in the first instance.⁷ Ultimately, there is little point in quibbling over the Board's wording because the Board in fact applied both DoDI 1332.38 and SECNAVINST 1850.4E throughout its opinion. Indeed, the Board quoted in full SECNAVINST 1850.4E, § 3301, stating "[t]he sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating." AR 473. The Board not only laid out this standard but repeated its operative language no less than 25 times. AR 473-488.

Plaintiff also contends that the Board overlooked the "deployability" factor set out in SECNAVINST 1850.4E, § 3304. ECF 47 at 32-35. As discussed above, that regulation states that determining whether a member can reasonably perform his or her duties includes consideration of four factors pertaining to (1) common military tasks; (2) physical readiness/fitness tests; (3) deployability; and (4) special qualifications. Of these four factors, Plaintiff argues that the Board expressly declined to address the issue of deployability and, instead, considered only Plaintiff's fitness to serve in a "garrison environment." ECF 47 at 33 (quoting AR 484).

Plaintiff is correct that the Board did not explicitly address the issue of deployability but this omission is not a point of error. Navy regulations were clear at the time of Plaintiff's discharge that the issue of deployability could not serve as the sole basis for involuntary discharge: A key regulation then in existence, SECNAVINST 1850.4E, § 2051, recognized that "non-deployability alone will not normally constitute a basis for a finding of Unfit." Similarly, SECNAVINST 1850.4E, § 3307a provides that "[i]nability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of Unfitness." *See also* § 3304(3). The Board expressly cited this regulation in limiting its analysis to whether Plaintiff could serve in a non-deployment setting or "garrison

⁷ Under the Navy's regulations, the PEB is the entity responsible for making "determinations of fitness to continue naval service, entitlement to benefits, disability ratings, and disposition of service members referred' to it from the Navy." SECNAVINST 1850.4E at 3. Although Plaintiff was never referred to the PEB for evaluation before being discharged, the standards established in DoDI 1332.38 and SECNAVINST 1850.4E apply to both the Board and this Court in evaluating Plaintiff's claim. *See Ford v. United States*, 170 Fed. Cl. 458, 469-70 (2024).

environment.” AR 484-86. Because the Board found no other basis for finding Plaintiff unfit, it had no reason to consider the issue of deployability as it alone could not have affected the outcome of the Board’s decision. AR 484-85.

As for the remaining three factors, the Court is satisfied that the Board considered and addressed them in its opinion. Plaintiff does not argue otherwise. Regarding the first factor, common military tasks, the Board detailed Plaintiff’s duties in his instructor billet at the Field Medical Training Battalion and relating those tasks to the broader duties of an infantry unit leader. AR 484-84. As for the second factor, physical readiness/fitness tests, the Board found that Plaintiff “performed first-class physical and combat fitness tests” while serving as instructor at the Field Medical Training Battalion. AR 484. Finally, the Court is satisfied that the Board considered the fourth factor, special qualifications, which concerns “[t]he inability to perform specialized duties or loss of special qualification, i.e., aviation, parachuting or diving qualifications, etc.” SECNAVINST 1850.4E, § 3307c. Although the Board did not address such a factor by name, it noted that Plaintiff maintained “the capabilities of core and core plus skills for a 0300 Basic Infantry Marine,” AR 484, which include training and qualification for standard service weapons. Infantry Training & Readiness Manual from Commandant of the Marine Corps (Aug. 30, 2013), NAVMC 3500.44B at 8-3 to 8-6 (T&R Manual). The Board also noted that Plaintiff “instructed and maintained marksmanship with the M9 service pistol and the M4 carbine.” AR 484. For his part, Plaintiff does not contend that he ever lost or lacked a required special qualification. And any argument as to this factor is deemed waived as it was neither raised by Plaintiff before the Board (despite being ably represented) nor in his briefings to this Court post-remand. *Christian v. United States*, 46 Fed. Cl. 793, 802 (2000) (“issues and arguments not made before the relevant military correction board or administrative agency are deemed waived and [cannot] be raised in a judicial tribunal”). The Court is satisfied that the Board correctly considered and construed the controlling regulations and so turns to the Board’s weighing of the evidence.

B. The Board’s Factual Findings are Supported by Substantial Evidence

Plaintiff’s remaining arguments, detailed below, ask the Court to modify the weight assigned by the Board to each piece of evidence. Plaintiff argues that the Board assigned too much weight to his fitness reports and his separation physical while incorrectly discounting the reports of Drs. Vogel and Blumenfield. The Court addresses each piece of evidence in turn.

1. *Fitness Reports*

First, Plaintiff argues that the Board improperly relied on fitness reports describing his positive performance in his instructor billet without giving any consideration to whether he was capable of performing the duties of his broader rating of infantry unit leader. ECF 47 at 35-36. According to Plaintiff, these fitness reports were prepared by non-Marines, evaluated his performance in a non-combat role, and did not reflect his fitness to perform the broader duties of an infantry unit leader. *Id.* Plaintiff cites *Kelly* for the proposition that

“a mere review of whether a member was adequately performing duties—regardless of what those were—immediately before separation is not sufficient.” *Id.* at 36 (quoting 157 Fed. Cl. at 125).⁸

However, Plaintiff’s reliance on *Kelly* is misplaced. There, the Board found that the plaintiff was fit to serve as a Second-Class Navy Diver at the E4 grade based on two performance evaluations conducted while he was serving in an administrative role. 157 Fed. Cl. at 126. The Board erred, the Court concluded, because it “made no explicit or implicit finding regarding what duties a Second-Class Navy Diver at the E4 grade is reasonably expected to perform or finding that the duties Plaintiff was performing during the periods covered by the two evaluation reports included such duties.” *Id.* In other words, the Board failed to consider whether the duties that the plaintiff was performing immediately before separation overlapped with the duties expected of his grade, rank, and rating. *See id.*

Here, however, the Board did exactly that. Specifically, the Board determined that “the duties that [Plaintiff] performed in [the instructor] billet were substantially the same as [he] would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment.” AR 484. In fact, the Board found that “[t]he only appreciable difference between [Plaintiff’s] duties as a FMTB-E Instructor and those [he] would have had if assigned to a operational Marine Corps unit in garrison ... was in the responsibilities, qualifications, and uniforms worn by the Service members operating under [Plaintiff’s] supervision at FMTB-E and the uniform worn by the officer to whom [he] reported.” AR 484-85.

This finding is supported by substantial evidence. Although Plaintiff’s instructor billet focused on teaching Navy medics and chaplains, he was not teaching medicine or theology. AR 1314. Rather, the purpose of Plaintiff’s instructor billet was to train and prepare Navy personnel for serving in the field with operational Marine combat units. AR 1314, 1316, 1321, 1326. Essentially, Plaintiff was an infantry instructor for non-infantry personnel actively serving with and supporting infantry Marines. *See id*; *see also* AR 1320 (“[Plaintiff’s] combat and infantry experience are the backbone for the highly successful training program provided to the Hospital Corpsmen as we prepare them for combat duty with the Marine Corps.”). As the Board recognized, Plaintiff “performed first-class physical and combat fitness tests; instructed and maintained marksmanship with the M9 service pistol and the M4 carbine; and instructed personnel on land navigation, offensive

⁸ The parties disagree as to whether Plaintiff’s instructor billet was coded for his rating of infantry unit leader (PMOS 0369). ECF 54 at 16 n.5. The Board found that it was after noting that three of the four fitness reports Plaintiff received while assigned as an instructor at FMTB-E listed 0369 as the billet PMOS while the outlier fitness report, which listed 3529 (Motor Transport Maintenance Chief) as the billet PMOS, reflected clear clerical error as the duties performed had no relation whatsoever to that PMOS. AR 484. This point of contention is ultimately of little consequence, however, because the primary question is whether Plaintiff’s duties in his instructor billet were substantially similar to those of his broader rating, regardless of how that billet was coded.

and defensive attacks, and ambushes.” AR 484; *see also* AR 1316. Plaintiff instructed his students in “combat leadership” and developed field exercises that more accurately reflected “current tactics, techniques and procedures used in the Fleet Marine Force.” AR 1321. These combat-related activities are a far cry from the administrative duties that the Board improperly focused on in *Kelly*.

Further, the nature of Plaintiff’s students hardly detracts from his capabilities as an instructor. Plaintiff seemingly suggests that he was assigned to teach chaplains and medics because he could not cut it teaching normal Marines. ECF 47 at 37. But this reasoning seems backwards in many ways. As the Board reasoned, anyone who can teach non-infantry, non-Marine personnel to become proficient in infantry tactics is just as if not more capable of doing the same for actual Marines. AR 485. Plaintiff makes much of the fact that he was training non-combatants at the Field Medical Training Battalion, arguing that “[t]here is simply no comparison between training infantry Marines, who are combatants, and training Navy Medical Department and Religious Program personnel, who expressly are not combatants.” ECF 47 at 37. However, Plaintiff did in fact train combatants in his instructor billet—the Religious Program Specialists (RPs) serving with combat Marines are combatants. *See* SECNAVINST 1730.7E at 4 (“RPs are combatants and will bear arms in connection with their military duties.”). Moreover, while Navy Combat Corpsmen serving with Marine Corps units are non-combatants, they are permitted under the Laws of War to be armed and to use deadly force in self-defense and in defense of their patients against unlawful attacks. *See* Department of Defense Law of War Manual, § 4.10.1. The very essence of Plaintiff’s job was to prepare such personnel for combat should such circumstances arise. AR 1320 (explaining that Plaintiff’s role in the “highly successful training program provided to the Hospital Corpsmen” was to “prepare them for combat duty with the Marine Corps.”).

Plaintiff also contends that the Board’s findings are erroneous because it never recited the requirements and duties of an infantry unit leader at the E6 grade. ECF 47 at 32-33. The Court disagrees. The Board noted that, per the Marine Corps Infantry Training and Readiness Manual, every billet coded for an infantry unit leader must “maintain the capabilities of core and core plus skills for a 0300 Basic Infantry Marine.” AR 484. And the Board addressed the substance (if not the exact wording) of the Training and Readiness Manual throughout its opinion. For example, the Training and Readiness Manual provides that infantry Marines must be able to navigate with a map and compass and conduct land navigation. T&R Manual at 8-4, 9-11 to 9-21. In this regard, the Board found that Plaintiff successfully trained thousands of Navy medical and religious personnel in land navigation skills. AR 480. The Manual also provides that infantry unit leaders must be able to lead units in offensive and defensive operations. T&R Manual at 9-50 to 9-58, 9-98 to 9-103. And the Board found that Plaintiff instructed personnel on “offensive and defensive attacks[] and ambushes.” AR 484.

If Plaintiff’s argument is that the Board should have exhaustively catalogued the duties of an infantry unit leader at the E6 grade, the Court is aware of no such requirement.

Rather, the Board must “consider[] the relevant evidence and [come] to a reasonable conclusion.” *Riser*, 97 Fed. Cl. at 683–84. Here, the Board did both. The Board certainly considered the relevant duties of an infantry unit leader at the E6 grade. In addition to the duties described in the Training and Readiness Manual, the Board considered the duties set forth in the Marine Corps MOS Manual, which the Board found to be “remarkably similar” to the duties of Plaintiff’s instructor billet. AR 484. And for the reasons discussed above, the Board came to a reasonable conclusion in finding that the duties Plaintiff performed in his instructor billet were “substantially the same” as he would have been performing as an infantry unit leader in a garrison environment. AR 484.

Resisting this reasoning, Plaintiff argues that the Board reached this conclusion without considering any duties or common military tasks involving active engagement in combat. ECF 47 at 32-34. Plaintiff contends that “preparing for and engaging in operational, deployable *combat* duty are the core common military tasks that an Infantry Unit Leader ‘could reasonably be expected to perform’”. ECF 47 at 34. Plaintiff points out that the Marine Corps MOS manual requires that infantry unit leaders be able “supervise and coordinate... the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort.” *Id.* at 32.

This argument, however, simply rehashes the issue of deployability. As discussed, controlling regulations at the time of Plaintiff’s discharge recognized that “non-deployability alone will not normally constitute a basis for a finding of Unfit.” SECNAVIST 1850.4E, § 2051. If not explicit in the text of § 2051, it is at least strongly implied that the ability to engage in combat, like the ability to deploy, cannot serve as the sole basis for a finding of unfit. Although Plaintiff argues that combat falls within the “common military tasks” of an infantry unit leader, the term “common military task” must be read in conjunction with § 2051. In other words, because deployability cannot serve as the sole basis for a finding of unfit, neither can a member’s inability to perform “common military tasks” that are only prevalent in a deployment setting. And given the rarity of military engagements on American soil, combat is not a “common military task” for soldiers in a stateside environment. Indeed, it is difficult to conceive of a circumstance in which a soldier who is not deployed can reasonably expect to engage in combat with the enemy. In sum, the Board did not err by failing to consider military tasks related to direct engagement in combat.

Nonetheless, Plaintiff contends that § 2051 should not be read as applying to Marines with combat ratings but only certain non-combatants who can perform their normal duties without leaving the country. ECF 57 at 26. However, Plaintiff’s selective application of § 2051 is wholly atextual and would essentially swallow the rule. In providing that “non-deployability alone will not normally constitute a basis for a finding of Unfit,” nowhere does § 2051 caveat “unless that service member is a rifleman, pilot, or other member with a combat-related rating or who can expect to deploy.” In the absence of any limiting language, the Court presumes that § 2051 was intended to apply to all Marine Corps and Navy personnel regardless of rating. Plaintiff may take issue with the

prudence of such a regulation, but it is not for this Court to second guess the rules promulgated by the Secretary. It is well settled that “the military is entitled to substantial deference in the governance of its affairs.” *Dodson v. United States Gov’t, Dep’t of the Army*, 988 F.2d 1199, 1204 (Fed. Cir. 1993); *see also Orloff v. Willoughby*, 345 U.S. 83, 93 (1953) (“[J]udges are not given the task of running the Army.”).

Even so, the facts of this case evince the very purpose and wisdom behind such a rule. Plaintiff provided enormous value to the Navy and Marine Corps by readying other personnel to deploy and serve in the field alongside combat units, regardless of whether he himself could deploy. In treating the issue of deployability as non-dispositive, the Secretary of the Navy recognized the value that countless service members, including Plaintiff, have added to the Navy and Marine Corps outside a deployment setting. Consider the following commendation Plaintiff received a year before his separation:

[Staff Sergeant] Bee is an outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailor and Marines at [the Field Medical Training Battalion]. His performance has had force-wide impact and significantly enhanced the quality, character, capabilities, and attitudes of thousands of Hospital Corpsmen, Religious Program Specialists, Chaplains, and Navy Medical Department Officers now serving with the Marine Corps operating forces world-wide.

AR 1325. In another fitness report, the reviewing officer stated that “[a]lthough [Plaintiff] is leaving active duty, if he ever returns and I was given the opportunity, I would actively seek him out to serve with anywhere at any time.” AR 1330. To be sure, the weight of the evidence suggests that our military would not have been better served by involuntarily discharging Plaintiff.

2. *Separation Physical*

Plaintiff next argues that the Board improperly relied on his separation physical, which as discussed, deemed him “qualified for service” and released him “w/o limitations.” AR 103, 189. Plaintiff contends that the Board improperly assigned the presumption of regularity to this physical, which he argues, failed to comply with standard procedure. ECF 47 at 38-39. Binding guidance at the time required that separation physicals “include ... a review of the individual medical history and medical record ... [and] any indicated specialty consultations.” *See* Policy Guidance for Separation Physical Examinations (Oct. 14, 2005), ECF 42-1 at 3. According to Plaintiff, although the separation physical ordered a general neurology consult referral “there is no record evidence of such a follow-[up] evaluation, and the examiner did not wait to give Plaintiff an opportunity to pursue such specialty consultation before signing off on the separation physical.” ECF 47 at 39. Guidance also required that separation physicals include an assessment regarding a member’s worldwide qualifications for retention (according to service guidelines) or need

for referral to a Medical Evaluation Board (MEB). ECF 42-1 at 3. Plaintiff contends that the separation physical inexplicably failed to make such an assessment. ECF 47 at 39.

Even if the separation exam was irregular, however, the Court applies the rule of harmless error. *See* 5 U.S.C. §706(a) (“due account shall be taken of the rule of prejudicial error”); *Wagner v. United States*, 365 F.3d 1358, 1361 (Fed. Cir. 2004) “[S]trict compliance with procedural requirements is not required where the error is deemed harmless.”). Whether Plaintiff should have been referred to a MEB is not determinative of whether he would have ultimately been found unfit for duty. *See Qoye v. United States*, No. 20-1388C, 2024 WL 1435060, at *4 (Fed. Cl. April 3, 2024). The issue here is “not whether the Navy’s treatment of Plaintiff’s disability retirement request was procedurally perfect, but whether the [Board’s] ultimate determination that he was ineligible for medical retirement should be upheld.” *Id.* The Board “is empowered to make disability determinations in the first instance, even if additional medical processing at the time of discharge would have been appropriate.” *Id.* Because the Board denied Plaintiff’s claim after a full review of the evidence, any procedural error regarding the separation exam was harmless.

Of course, the Board relied on the separation physical in deciding the ultimate question of fitness, noting it “to be persuasive evidence of [Plaintiff’s] medical fitness at the time of [his] discharge.” AR 486. The Court, however, must view both the record and the Board’s decision as a whole. *In re Gartside*, 203 F.3d at 1312. As has been discussed at length, the Board primarily based its decision on Plaintiff’s performance evaluations showing that he could perform duties substantially similar to those of a Marine rifleman in a garrison environment. *See* AR 482-89. The Board explicitly favored this form of evidence over the medical evidence. AR 483 (“The most compelling evidence that you were fully capable of performing the duties of your office, grade, rank, or rating was that you were, in fact, capably performing the duties of your office, grade, rank, or rating as an Instructor at [the Field Medical Training Battalion]”). Even without the separation physical weighing against Plaintiff’s claim, a reasonable fact finder could have nevertheless arrived at the Board’s decision as Plaintiff’s fitness reports constitute substantial evidence sufficient to uphold the Board’s opinion. *See In re Gartside*, 203 F.3d at 1312 (explaining that the substantial evidence standard asks “whether a reasonable fact finder could have arrived at the agency’s decision” and “involves examination of the record as a whole, taking into account evidence that both justifies and detracts from an agency’s decision”).

Plaintiff also argues that the Board more generally considered the absence of a referral pre-discharge in deciding the ultimate question of fitness. ECF 47 at 40-41. This assertion appears to be based on the following statement by the Board:

This medical record would not likely result in the referral of any Marine to a MEB. It is unlikely that any physician would, and apparently none among the numerous different specialty clinics and primary care providers that you visited at different locations after incurring your final TBI in June 2010 did,

believe that your medical conditions significantly interfered with the performance of duties appropriate to your office, grade, rank or rating. This is not surprising since, as discussed further below, you were, in fact, successfully performing duties appropriate to your office, grade, rank, or rating despite your medical conditions.

AR 478. According to Plaintiff, the Board's reasoning amounts to little more than "Mr. Bee was fit because no one found him to be unfit." ECF 47 at 41. Plaintiff cites *Hassay v. United States* for the proposition that "[the Navy] should not be permitted to rely on the absence of contemporaneous evidence" that a service member's condition made him unfit for service "to the extent that the Navy violated its own regulations by not referring him to the Disability Evaluation System." 150 Fed. Cl. 467, 482 (2020).

As a threshold issue, however, the Board did not generally rely on Plaintiff's non-referral in deciding the question of fitness. The previous excerpt simply notes that Plaintiff's non-referral was not "not surprising" and consistent with the evidence that he was successfully performing the duties of his office, grade, rank, and rating. AR 478. Further, even if the Board did rely more generally on the absence of a referral, the Court is not convinced that such a consideration was inappropriate. Even assuming that the separation exam was irregular, Plaintiff underwent numerous other exams before discharge. The Board "applied the presumption of regularity to the assessments made by [Plaintiff's] numerous medical providers between [his] TBI in June 2010 and [his] discharge in April 2013." AR 478. Apart from the separation physical, Plaintiff does not allege that any of these exams failed to comply with standard policy or were otherwise irregular. In sum, one irregular exam should not prevent the Board from considering the fact that none of the medical professionals over a roughly three-year period leading up to Plaintiff's discharge found it necessary to refer him to a MEB.

3. C&P Exam by Dr. Vogel

Next, Plaintiff argues that the Board inappropriately discounted his VA disability ratings and the C&P exam on which they were based. ECF 47 at 47. According to Plaintiff, the Board failed to even reference or acknowledge his VA disability ratings of 70% for PTSD and 70% for TBI—both of which considerably exceed the 30% threshold to qualify for disability retirement. *Id.*

Section 1201 of Title 10 provides that military personnel who become disabled in service with at least a 30% disability rating are eligible to receive disability retirement pay from the Department of Defense. 10 U.S.C. § 1201(a), (b)(3)(B). However, this Court has held that VA disability ratings are not binding on the service branches and are "in no way ultimately determinative of claims for military disability retirement." *Hinkle v. United States*, 229 Ct. Cl. 801, 805 (1982). The sole standard remains that of fitness to perform the duties of the office, grade, rank or rating. SECNAVINST 1850.4E, § 3302; *see also Gossage v. United States*, 91 Fed. Cl. 101, 110 (Fed. Cl. 2010) (quoting DoD Directive

1332.18, ¶ 3.3). Of course, VA disability ratings and the exams on which they are based constitute relevant evidence that must be considered in determining unfitness for duty. *Valles-Prieto v. United States*, 159 Fed. Cl. 611, 618 (2022) (citing *Heisig v. United States*, 719 F.2d 1153, 1157 (Fed. Cir. 1983)). And to be sure, two 70% disability ratings based on an exam conducted immediately before discharge, as is the case here, are not to be easily outweighed or discounted by any of the service branches. *See id.*

Here, however, the Court is satisfied that the Board appropriately weighed this evidence. As discussed, Plaintiff's VA ratings were initially based on Dr. Vogel's C&P exam from January 2013. AR 104-115. The Board fully dissected Dr. Vogel's report and found that it was outweighed by contrary evidence. The Board stated of the report:

[Dr. Vogel's] conclusions ... were not supported by the objective evidence regarding your performance. Dr. Vogel reported that you suffered numerous functional impairments resulting from your TBI and/or PTSD conditions, but for every impairment that he noted there was objective evidence that such impairments were not nearly as debilitating as he reported them to be and/or that they did not impede your performance of duties. For example, he reported that you usually get "lost in unfamiliar surroundings, [have] difficulty reading maps, following directions and judging distances," but your [fitness reports] reflect that you successfully trained thousands of Navy Medical Department and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps, which specifically included land navigation skills. He reported cognitive function deficits affecting your memory and difficulty learning new material, planning and organizing, and maintaining attention or concentration on a task, but you were lauded during the period in question specifically for your maintaining "flawless accountability of personnel, weapons, and equipment for [your] platoons," for your "leadership, professional knowledge, and *meticulous attention to detail* [which] earned [you] the respect and admiration of students and staff (*emphasis added*)," and for developing "field exercises that more accurately represent current tactics, techniques, and procedures currently being experienced in current operational theaters." He reported that you experienced difficulty in communicating with others, but you somehow effectively trained thousands of Navy Medical Department and Religious Program personnel to successfully serve with and support Marine Corps operational units.

AR 480.

As is clear, the Board found it nearly impossible to square Dr. Vogel's opinion with Plaintiff's documented performance in his fitness reports. The Board rightly determined that something must give, that something being the C&P exam. *See id.* That the Board put greater weight on Plaintiff's fitness exams comports with SECNAVINST 1850.4E, § 3205a, which recognizes that "an assessment of the member's performance of duty by his or her chain of command may provide better evidence of the member's ability to perform his or her duties than a clinical estimate by a physician." Indeed, as the Board acknowledged, Plaintiff's fitness reports were based on direct observation of Plaintiff's performance, whereas his degree of impairment as described in Dr. Vogel's opinion was informed by his own self report. AR 479-80. This is not to question Plaintiff's truthfulness, nor is it necessary to do so.⁹ There are a variety of reasons Plaintiff may have overreported his symptomology during the C&P exam. It is also possible, as the Board acknowledged, that Plaintiff's symptomology was accurately reported but simply did not affect his work performance in the way one might have predicted. *Id.* ("[F]or every impairment that [Dr. Vogel] noted there was objective evidence that such impairments were not nearly as debilitating as he reported them to be and/or that they did not impede your performance of duties."). Either way, the Board did not err in finding that the probative value of the C&P exam was outweighed by Plaintiff's fitness reports.¹⁰

Of course, the Board's treatment of Dr. Vogel's opinion is not without misstep. At one point, the Board described in its view "the inherent unreliability and irrelevance of a VA C&P examination toward fitness determinations in general." AR 485. This statement is erroneous because, as already discussed, VA C&P exams are relevant evidence to be considered in deciding fitness. *Valles-Prieto*, 159 Fed. Cl. at 618. However, such a statement is not reversible error. If the Board believed that C&P exams do not need to be considered or weighed against contrary evidence, it made absolutely no attempt to follow through on that belief. As is clear from the above excerpt, the Board thoroughly considered and weighed Dr. Vogel's exam but simply found it to be less probative than contrary evidence speaking directly to the question of Plaintiff's fitness (*i.e.*, Plaintiff's fitness reports). AR 480.

4. Report of Dr. Blumenfield

Plaintiff further challenges the Board's negative treatment of Dr. Blumenfield's report, which was conducted roughly five years after Plaintiff left service and found him

⁹ Further, like the Board, this Court does not question the current severity of Plaintiff's conditions or his entitlement to the disability compensation he is currently receiving.

¹⁰ Notably, Plaintiff never argues that his fitness reports painted an inaccurate picture of his performance. Nor could such an allegation be supported by the evidence. By all accounts, Plaintiff performed admirably in his instructor billet and any argument to the contrary would invoke the unsavory charge that Plaintiff's superiors were misreporting his performance over a two-and-a-half-year period to the detriment of his peers and those under his instruction. *See, e.g.*, AR 385-86, 391, 392.

unfit for duty at the time of discharge. In assessing the report, the Board “did not doubt Dr. Blumenfield’s credentials or qualifications” but “did not find his report to be particularly persuasive.” AR 479. Plaintiff argues that the Board discounted Dr. Blumenfield’s opinion for three inappropriate reasons.

First, Plaintiff disputes the Board’s finding that Dr. Blumenfield “provided nothing to support his conclusion.” ECF 47 at 46. Plaintiff contends that Dr. Blumenfield reviewed thousands of pages of medical records, including the Dr. Johnson and Dr. Vogel reports, personally interviewed Plaintiff and his wife, and performed diagnostic tests on Plaintiff. *Id.* (citing AR 163–66).

The Court disagrees. The Board did not state that Dr. Blumenfield provided no explanation whatsoever. Rather, the Board stated that Dr. Blumenfield “provided nothing to support his conclusion that [Plaintiff’s] conditions interfered with [his] ability to perform duties appropriate to [his] office, grade, rank or rating” and that his conclusions in this regard “were not explained or supported by any analysis.” AR 479. This is a fair characterization of the report. “[T]he question of fitness is ... not merely a medical one,” and a medical examiner who opines on the question of fitness is no longer acting solely in his medical capacity. *Ferrell v. United States*, 23 Cl. Ct. 562, 571 (1991). Dr. Blumenfield failed to explain how he jumped from point A, Plaintiff’s medical conditions, to point B, Plaintiff’s unfitness. The report simply catalogues Plaintiff’s medical history and symptomology as though it is self-evident that a person with Plaintiff’s conditions cannot serve as a Marine rifleman. AR. 163-166. Dr. Blumenfield never addressed any of the duties of a Marine rifleman, as the Board pointed out, nor did he explain how Plaintiff’s conditions might impede performance of those duties. *Id.* Further, even if Dr. Blumenfield provided such explanation, his conclusion is severely undermined by his failure to consider evidence to the contrary. Indeed, the Board found it difficult to credit the report as Dr. Blumenfield did not review any contemporaneous records describing [Plaintiff’s] *performance of duties* during the period in question” (*i.e.*, Plaintiff’s fitness reports). AR 479 (emphasis added). The Board may certainly discredit a conclusion that is reached without consideration of key conflicting evidence.

Second, Plaintiff takes issue with the Board’s reasoning that “it was not even clear ... that [Dr. Blumenfield] knew the duties of a Marine rifleman or understood and applied the standard for a finding of medical unfitness in making these conclusions.” AR 479. *See also* ECF 47 at 47. According to Plaintiff, this criticism ignores Dr. Blumenfield’s explanation that Plaintiff had described his history and role in the Marine Corps. ECF 47 at 47; AR 163–64

That may be. However, Plaintiff’s description of his history in the Marine Corps, which presumably included his numerous deployments, only raises additional concerns. It is unclear whether Dr. Blumenfield limited his analysis to Plaintiff’s role in a garrison environment or whether he disproportionately considered Plaintiff’s numerous deployments and impermissibly rested his conclusion on Plaintiff’s deployability and ability to engage in combat. Like the Board, the Court cannot assess Dr. Blumenfield’s

analysis because it is not in his report. When a medical professional opines on the ultimate question of fitness, his opinion (like any opinion) is only as persuasive as the force of its reasoning. Because Dr. Blumenfield did not discuss the duties of a Marine rifleman or even reference the correct standard for determining fitness, the Board had sufficient reason to assign his opinion little weight.

Third, Plaintiff argues that the Board acted inappropriately by considering the for-profit nature of Dr. Blumenfield's services. ECF 47 at 46. Specifically, the Board found that Dr. Blumenfield possessed a "financial incentive to reach a particular result." AR 479. According to Plaintiff, the Board had no basis in the record to speculate that Dr. Blumenfield's compensation was in any way tied to the result of his examination. ECF 47 at 46. Plaintiff cites two cases for the proposition that the Board cannot dismiss a medical opinion merely because the physician was paid for his services. *Id.* (citing *Hassay*, 150 Fed. Cl. at 480; *Ferrell*, 23 Cl. Ct. at 571).

These citations do not touch upon the cited proposition, however, and appear to have been made in error. The Court is not aware of any prohibition on the Board considering, among other things, the financial incentive of a private medical examiner. And even if such a consideration is impermissible, Plaintiff has not shown that he was prejudiced by such an error. *See* 5 U.S.C. § 706. Financial incentive aside, the Board had a sufficient basis to discount Dr. Blumenfield's opinion based on his failure to consider key evidence and to articulate the applicable standards.

5. *Other Factual Findings*

Finally, the Board considered two additional factors set forth in SECNAVINST 1850.4E, § 3302b, namely whether Plaintiff's medical conditions: (1) "represent[ed] a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty;" and (2) "impose[d] unreasonable requirements on the military to maintain or protect the member." AR 486 n.35. The Board expressly found that neither factor supported Plaintiff's claim, citing substantial evidence to support its conclusion. *See* AR 481-82.

Plaintiff argues that the Board made incorrect factual assertions in considering the first factor. In relevant part, the Board stated that "there simply was no evidence to support a belief that [Plaintiff's] conditions would seriously compromise [his] health or well-being if [he] were to remain in the Marine Corps" because after "being removed from LIMDU status in October 2010, [Plaintiff] had only two medical encounters related to [his] TBI and PTSD conditions over the next two years." AR 481. Plaintiff argues that he had at least seven medical encounters related to his PTSD and TBI during the time period outlined by the Board.¹¹ AR 47 at 43.

¹¹ Plaintiff also contends that the Board understated his limited duty status by two months. ECF 47 at 35. The record is admittedly unclear on this point (in fact, Plaintiff previously told the Board that his limited

How Plaintiff arrives at these seven encounters, however, is far from clear. Rather than list them with any specificity, Plaintiff merely cites to various sections of the administrative record in cursory fashion. ECF 47 at 35 (citing AR 179-81, 426-27; Am. Compl. at 21-22).¹² Even if the Board overlooked a particular medical encounter, the Board's reasoning was informed more by the outcome than the number of such encounters. AR 481. In finding that Plaintiff's condition did not seriously compromise his health, the Board placed particular weight on the fact Plaintiff was "returned to duty with no medical restrictions" after each encounter and that at no point did Plaintiff's conditions "require close medical supervision or hospitalization." *Id.* Ultimately, the Court is satisfied that the Board considered and articulated a fair and accurate view of Plaintiff's medical record and history.

C. Totality of the Record Supports the Board's Conclusion

In sum, the Court does not review the record in piecemeal fashion but "as a whole, taking into account evidence that both justifies and detracts from the [Board's] decision." *OSI Pharms.*, 939 F.3d at 1381-82 (Fed. Cir. 2019) (citing *In re Gartside*, 203 F.3d 1305, 1312 (Fed. Cir. 2000)). Here, when considering the record as a whole, there is substantial evidence to support the Board's conclusion that Plaintiff was fit to perform the duties of his office, grade, rank, and rating. Although there is evidence in favor of Plaintiff's claim, it is not enough for this Court to overturn the Board's weighing of the evidence. *Ford v. United States*, 150 Fed. Cl. 220, 224 (2020) ("If the Court finds that the [B]oard's decision was reasonable and supported by substantial evidence, it will not overturn the [B]oard's decision."). Ultimately, the Court agrees with the Board that the most probative evidence of Plaintiff's fitness is his fitness reports speaking directly on the question. To paraphrase the Board, the most compelling evidence that Plaintiff could perform the duties of his office, grade, rank, or rating, at the time of discharge, is that he was, in fact, capably performing the duties of his office, grade, rank, or rating at the time of discharge. AR 483.

CONCLUSION

For the foregoing reasons, the Government's Motion for Judgment on the Administrative Record (ECF 54) is **GRANTED**. Plaintiff's Motion for Judgment on the Administrative Record (ECF 47) and the Government's Motion to Dismiss (ECF 54) are **DENIED**. The Clerk of Court is directed to enter judgment accordingly.

duty status was terminated in September 2010). At least one notation in Plaintiff's medical records indicates that he was "returned" to his previous active-duty status as of October 26, 2010. AR 179. At any rate the Court finds this exact factual dispute to be purely peripheral to the Board's weighing of the evidence.

¹² As an example of additional medical encounters, Plaintiff cites a portion of the AR showing his pharmaceutical history during that time. ECF 47 at 35 (citing AR 426-27). The Court does not interpret "medical encounters" as used by the Board to include pharmacy transactions.

IT IS SO ORDERED.

A handwritten signature in blue ink that reads "Philip Hadji". The signature is written in a cursive style with a horizontal line underneath the name.

PHILIP S. HADJI

Judge

Case 1:21-cv-01970-PSH Document 78 Filed 08/23/24 Page 1 of 1

In the United States Court of Federal Claims

No. 21-1970 C

Filed: August 23, 2024

WILLIAM OLAS BEE
Plaintiff

JUDGMENT

v.

THE UNITED STATES
Defendant

Pursuant to the court's Opinion and Order, filed August 23, 2024, denying plaintiff's motion for judgment on the administrative record, denying defendant's motion to dismiss, and granting defendant's cross-motion for judgment on the administrative record,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that judgment is entered in favor of defendant.

Lisa L. Reyes
Clerk of Court

By: s/ Debra L. Samler

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$505.00.

**US Court of Federal Claims
 United States Court of Federal Claims (COFC)
 CIVIL DOCKET FOR CASE #: 1:21-cv-01970-PSH**

BEE v. USA
 Assigned to: Judge Philip S. Hadji
 Demand: \$1,000,000
 Case in other court: 24-02306
 Cause: 28:1491 Tucker Act

Date Filed: 10/06/2021
 Date Terminated: 08/23/2024
 Jury Demand: None
 Nature of Suit: 344 Military Pay - Correct Records
 Jurisdiction: U.S. Government Defendant

Plaintiff

WILLIAM OLAS BEE

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Date Filed	#	Docket Text
10/06/2021	1	COMPLAINT against USA (NAV) (Filing fee \$402, Receipt number AUSFCC-7393917) (Copy Served Electronically on Department of Justice), filed by WILLIAM OLAS BEE. Answer due by 12/6/2021. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, #

		20 Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22)(ew) (Entered: 10/08/2021)
10/06/2021	2	MOTION to Seal Attached exhibits to 1 complaint, filed by WILLIAM OLAS BEE. Service: 10/6/2021. Response due by 10/20/2021. (ew) (Entered: 10/08/2021)
10/08/2021	3	Notice of Random Assignment Pursuant to Rule 40.1(a) to Judge Loren A. Smith. (ew) (Entered: 10/08/2021)
10/08/2021	4	NOTICE of Designation of Electronic Case. (ew) (Entered: 10/08/2021)
10/19/2021	5	ORDER granting 2 Motion to Seal Document. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 10/19/2021)
10/25/2021	6	NOTICE of Appearance by Russell James Upton for USA . (Upton, Russell) (Entered: 10/25/2021)
11/30/2021	7	NOTICE, filed by USA of <i>Filing Administrative Record</i> . (Attachments: # 1 Administrative Record Part 1, # 2 Administrative Record Part 2, # 3 Administrative Record Part 3, # 4 Administrative Record Part 4, # 5 Administrative Record Part 5, # 6 Administrative Record Part 6)(Upton, Russell) (Entered: 11/30/2021)
12/06/2021	8	Unopposed MOTION for Leave to File Proposed Schedule for Further Proceedings , filed by USA. Response due by 12/20/2021. (Upton, Russell) (Entered: 12/06/2021)
12/08/2021	9	ORDER granting 8 Motion for Leave to File a Proposed Schedule for Further Proceedings. Joint Status Report due by 12/10/2021. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 12/08/2021)
12/10/2021	10	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 12/10/2021)
12/14/2021	11	Motion to Complete the Administrative Record, filed by USA. Response due by 12/28/2021. (Attachments: # 1 Attach. A - Completed Index, # 2 Attach. B - Tabs 17-18, # 3 Attach. C - Completed Certification)(Upton, Russell) (Entered: 12/14/2021)
12/15/2021	12	SCHEDULING ORDER: Plaintiff's Motion for Judgment on the Administrative Record due by 2/14/22. Defendant's Response and Cross-Motion for Judgment on the Administrative Record due by 3/14/22. Plaintiff's Reply and Response due by 3/28/22. Defendant's Reply due by 4/11/22. Signed by Senior Judge Loren A. Smith. (ah) Service on parties made. (Entered: 12/15/2021)
12/15/2021	13	ORDER granting 11 Motion to Complete the Administrative Record. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 12/15/2021)
02/08/2022	14	Unopposed MOTION for Extension of Time until March 16, 2022 to file Motion for Judgment on the Administrative Record , filed by WILLIAM OLAS BEE. Response due by 2/22/2022. (Steensma, Darryl) (Entered: 02/08/2022)
02/08/2022	15	MOTION For Pro Hac Vice participation (Attorney: Ashley Gebicke. Is attorney admitted to her/his highest state court? Yes. Name of court: California. , filed by WILLIAM OLAS BEE.(Steensma, Darryl) (Entered: 02/08/2022)
02/08/2022	16	MOTION For Pro Hac Vice participation (Attorney: Ryan T. Giannetti. Is attorney admitted to her/his highest state court? Yes. Name of court: Maryland, District of Columbia. , filed by WILLIAM OLAS BEE.(Steensma, Darryl) (Entered: 02/08/2022)
02/10/2022	17	ORDER granting 14 Motion for Extension of Time. Plaintiff's Motion for Judgment on the Administrative Record due by 3/16/22. Defendant's Response and Cross-Motion for Judgment on the Administrative Record due by 4/13/22. Plaintiff's Reply and

		Response due by 4/27/22. Defendant's Reply due by 5/11/22. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 02/10/2022)
02/10/2022	18	ORDER denying 15 Motion for Pro Hac Vice Admission. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 02/10/2022)
02/10/2022	19	ORDER denying 16 Motion for Pro Hac Vice Admission. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 02/10/2022)
03/16/2022	20	MOTION for Judgment on the Administrative Record , filed by WILLIAM OLAS BEE. Response due by 4/13/2022. (Attachments: # 1 Appendix)(Steensma, Darryl) (Entered: 03/16/2022)
04/11/2022	21	Unopposed MOTION for Extension of Time until May 11, 2022 to File Response to Plaintiff's Motion for Judgment Upon the Administrative Record and Cross-Motion for Judgment Upon the Administrative Record <i>And Commensurate Enlargements of the Remaining Deadlines</i> , filed by USA. Response due by 4/25/2022. (Upton, Russell) (Entered: 04/11/2022)
04/12/2022	22	ORDER granting 21 Motion for Extension of Time. Defendant's Response and Cross-Motion for Judgment on the Administrative Record due by 5/11/22. Plaintiff's Reply and Response due by 5/25/22. Defendant's Reply due by 6/8/22. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 04/12/2022)
05/11/2022	23	CROSS MOTION and RESPONSE to 20 MOTION for Judgment on the Administrative Record filed by USA and MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. Responses due by 5/25/2022. (Upton, Russell). Modified on 5/13/2022 - Corrected docket event/text (py). (Entered: 05/11/2022)
05/25/2022	24	RESPONSE to 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) <i>and Cross-Motion for Judgment Upon The Administrative Record</i> , filed by WILLIAM OLAS BEE. Reply due by 6/8/2022. (Steensma, Darryl) Modified on 5/27/2022 to correct docket text and reply deadline. (py). (Entered: 05/25/2022)
06/08/2022	25	REPLY to Response to Motion re 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) <i>and Cross-Motion for Judgment Upon The Administrative Record And Response To Plaintiff's Motion For Judgment Upon The Administrative Record</i> CROSS MOTION and RESPONSE , filed by USA. (Upton, Russell) (Entered: 06/08/2022)
06/17/2022	26	MOTION for Oral Argument re 24 Response to Cross Motion, 23 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) <i>and Cross-Motion for Judgment Upon The Administrative Record And Response To Plaintiff's Motion For Judgment Upon The Administrative Record</i> CROSS MOTION and RESPONSE, 20 MOTION for Judgment on the Administrative Record , 25 Reply to Response to Motion, , filed by WILLIAM OLAS BEE. Response due by 7/1/2022. (Steensma, Darryl) (Entered: 06/17/2022)
07/11/2022	27	ORDER granting 26 Motion for Oral Argument. Oral Argument is set for 7/25/2022 03:00 PM EDT. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 07/11/2022)
07/25/2022		Minute Entry - Was the proceeding sealed to the public? No. If Yes, only parties to the case may order a copy of the transcript. Proceeding held in Washington, D.C. 7/25/2022 through 7/25/2022 before Senior Judge Loren A. Smith: Oral Argument. [Total number of days of proceeding: 1] Approximate duration of proceeding: 1 hour and 30 minutes. Official record of proceeding taken by court reporter. To order a certified transcript or an audio recording of the proceeding, click HERE .(ah) (Entered: 07/25/2022)
07/27/2022	28	STATUS CONFERENCE ORDER: Status Conference set for 8/22/2022 05:00 PM EDT in Chambers (Telephonic) before Senior Judge Loren A. Smith. Signed by Senior

		Judge Loren A. Smith. (cew) Service on parties made. (Entered: 07/27/2022)
08/22/2022	29	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 08/22/2022)
08/22/2022		ORDER Cancelling Status Conference: 5:00 PM Status Conference on 8/22/22 . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 08/22/2022)
08/22/2022	30	ORDER. Joint Motion or Joint Status Report due by 8/29/2022 . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 08/22/2022)
08/29/2022	31	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 08/29/2022)
08/29/2022	32	ORDER. Joint Motion or Joint Status Report due by 9/12/2022 . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 08/29/2022)
09/12/2022	33	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 09/12/2022)
09/12/2022	34	ORDER. Joint Motion or Joint Status Report due by 9/19/2022 . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 09/12/2022)
09/19/2022	35	Joint MOTION to Remand <i>And For A Stay Of Court Proceedings Pending The Remand Results</i> , filed by USA. Response due by 10/3/2022 .(Upton, Russell) (Entered: 09/19/2022)
09/21/2022	36	ORDER granting 35 Motion to Remand. Status Report due by 12/20/2022 and every 90 days thereafter . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Main Document 36 replaced on 9/23/2022 to add the duration of the remand period and the Board's address.) (dls). (Entered: 09/21/2022)
09/26/2022	37	Certified Copy of the Court's September 21, 2022, Order served on the Board for Correction of Naval Records via U.S. Mail this day. (dls) (Entered: 09/30/2022)
12/20/2022	38	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 12/20/2022)
03/20/2023	39	JOINT STATUS REPORT , filed by USA. (Upton, Russell) (Entered: 03/20/2023)
06/01/2023	40	JOINT STATUS REPORT , filed by WILLIAM OLAS BEE. (Steensma, Darryl) (Entered: 06/01/2023)
06/05/2023	41	SCHEDULING ORDER: Amended Complaint due by 7/7/2023. Administrative Record due by 8/18/2023. Plaintiff's Motion for Judgment on the Administrative Record due by 9/20/2023. Defendant's Response and Cross Motion for Judgment on the Administrative Record and/or Motion to Dismiss due by 10/20/2023. Plaintiff's Reply and Response due by 11/20/2023. Defendant's Reply due by 12/20/2023 . Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 06/05/2023)
07/07/2023	42	AMENDED COMPLAINT against USA, filed by WILLIAM OLAS BEE. , filed by WILLIAM OLAS BEE. Answer due by 7/21/2023. (Attachments: # 1 Exhibit C)(Steensma, Darryl) (Entered: 07/07/2023)
07/07/2023	43	MOTION to Seal Document , filed by WILLIAM OLAS BEE. Response due by 7/21/2023 .(Steensma, Darryl) (Entered: 07/07/2023)
07/14/2023	44	ORDER granting 43 Plaintiff's Motion to Seal Exhibits A and B of the Amended Complaint. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 07/14/2023)
07/14/2023	45	**SEALED** NOTICE, filed by WILLIAM OLAS BEE <i>of Filing Sealed Exhibits re 42 Amended Complaint</i> . (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Steensma, Darryl) (Entered: 07/14/2023)

08/18/2023	46	SUPPLEMENT to the ADMINISTRATIVE RECORD , filed by USA. (Attachments: # 1 Supplement Index, # 2 Supplement Part I, # 3 Supplement Part II, # 4 Supplement Part III, # 5 Supplement Certification)(Upton, Russell) (Entered: 08/18/2023)
09/20/2023	47	MOTION for Judgment on the Administrative Record , filed by WILLIAM OLAS BEE. Response due by 10/20/2023. (Steensma, Darryl) Modified on 10/5/2023 to reflect the correct response date per the courts 6/5/2023 scheduling order (ew). (Entered: 09/20/2023)
10/19/2023	48	Unopposed MOTION to Amend Schedule re: 41 Scheduling Order,,, Trial Management Order,,, filed by USA. Response due by 11/2/2023. (Upton, Russell) (Entered: 10/19/2023)
10/20/2023	49	ORDER granting 48 Motion to Amend Schedule. Defendant's Cross Motion for Judgment on the Administrative Record and/or Motion to Dismiss and Response to plaintiff's Motion for Judgment on the Administrative Record due by 12/4/2023. Plaintiff's Reply and Response due by 1/30/2024. Defendant's Reply due by 2/29/2024. Signed by Senior Judge Loren A. Smith. (ts) Service on parties made. (Entered: 10/20/2023)
10/20/2023	50	ORDER REASSIGNING CASE to Judge Philip S. Hadji. Signed by Chief Judge Elaine D. Kaplan. (dls) Service on parties made. (Entered: 10/20/2023)
10/20/2023	51	NOTICE of Reassignment. Case reassigned to Judge Philip S. Hadji for all further proceedings. Senior Judge Loren A. Smith no longer assigned to the case. (dls) (Entered: 10/20/2023)
11/27/2023	52	Unopposed MOTION for Extension of Time to Fileuntil December 22, 2023 to to File Defendants Response to Plaintiffs Motion for Judgment on the Administrative Record and Cross-Motion for Judgment on the Administrative Record and/or Motion to Dismiss , filed by USA. Response due by 12/11/2023. (Upton, Russell) (Entered: 11/27/2023)
11/28/2023	53	ORDER granting 52 Motion for Extension of Time The Government shall file its response to Plaintiff's Motion for Judgment on the Administrative Record and Cross-Motion for Judgment on the Administrative Record and/or Motion to Dismiss on or before 12/22/2023. Signed by Judge Philip S. Hadji. (lrf) Service on parties made. (Entered: 11/28/2023)
12/22/2023	54	MOTION to Dismiss pursuant to Rule 12(b)(1) <i>And Cross-Motion For Judgment On The Administrative Record And Response To Plaintiffs Motion For Judgment On The Administrative Record</i> , filed by USA. Response due by 1/19/2024. (Upton, Russell) (Entered: 12/22/2023)
01/16/2024	55	Unopposed MOTION for Enlargement of the Briefing Schedule re 49 Order on Motion to Amend Schedule, , filed by WILLIAM OLAS BEE. Response due by 1/30/2024. (Steensma, Darryl) (Entered: 01/16/2024)
01/18/2024	56	ORDER granting 55 Motion for Enlargement of the Briefing Schedule. Plaintiff shall FILE his Reply in support of his Motion for Judgment on the Administrative Record and Response to Defendants Cross-Motion for Judgment on the Administrative Record on or before February 8, 2024. The Defendant shall file its Reply in support of its Cross-Motion for Judgment on the Administrative Record on or before March 8, 2024. Signed by Judge Philip S. Hadji.(lrf) Service on parties made. (Entered: 01/18/2024)
02/08/2024	57	RESPONSE and reply to 54 MOTION to Dismiss pursuant to Rule 12(b)(1) <i>And Cross-Motion For Judgment On The Administrative Record And Response To Plaintiffs Motion For Judgment On The Administrative Record</i> (Reply due by 2/22/2024.), REPLY to Response to Motion re 47 MOTION for Judgment on the Administrative Record , filed by WILLIAM OLAS BEE. (Steensma, Darryl) (Entered: 02/08/2024)

03/06/2024	58	Unopposed MOTION for Extension of Time until April 8, 2024 to File Reply as to 57 Response to Cross Motion [Dispositive],, Reply to Response to Motion, , filed by USA. Response due by 3/20/2024. (Upton, Russell) (Entered: 03/06/2024)
03/07/2024	59	ORDER granting 58 Motion for Extension of Time to File Reply in support of cross-motion for judgment on the administrative record. Reply due by 4/8/2024. Signed by Judge Philip S. Hadji. (idb) Service on parties made. (Entered: 03/07/2024)
04/05/2024	60	Unopposed MOTION for Extension of Time until April 12, 2024 to File Reply as to 57 Response to Cross Motion [Dispositive],, Reply to Response to Motion, , filed by USA. Response due by 4/19/2024. (Upton, Russell) (Entered: 04/05/2024)
04/08/2024	61	ORDER granting 60 Motion for Extension of Time to File Reply. Reply due by 4/12/2024. Signed by Judge Philip S. Hadji. (lrf) Service on parties made. (Entered: 04/08/2024)
04/11/2024	62	Unopposed MOTION for Extension of Time until April 19, 2024 to File Reply as to 57 Response to Cross Motion [Dispositive],, Reply to Response to Motion, , filed by USA. Response due by 4/25/2024. (Upton, Russell) (Entered: 04/11/2024)
04/12/2024	63	ORDER granting 62 Motion for Extension of Time to File Reply. Reply due by 4/19/2024. Signed by Judge Philip S. Hadji. (lrf) Service on parties made. (Entered: 04/12/2024)
04/19/2024	64	REPLY to Response to Motion re 54 MOTION to Dismiss pursuant to Rule 12(b)(1) <i>And Cross-Motion For Judgment On The Administrative Record And Response To Plaintiffs Motion For Judgment On The Administrative Record</i> , filed by USA. (Upton, Russell) (Entered: 04/19/2024)
04/30/2024	65	Unopposed MOTION for Oral Argument re 47 MOTION for Judgment on the Administrative Record , 54 MOTION to Dismiss pursuant to Rule 12(b)(1) <i>And Cross-Motion For Judgment On The Administrative Record And Response To Plaintiffs Motion For Judgment On The Administrative Record</i> , filed by WILLIAM OLAS BEE. Response due by 5/14/2024. (Steensma, Darryl) (Entered: 04/30/2024)
05/03/2024	66	Unopposed MOTION for Leave to File Notice of Supplemental Authority , filed by WILLIAM OLAS BEE. Response due by 5/17/2024. (Steensma, Darryl) (Entered: 05/03/2024)
05/06/2024	67	ORDER granting 66 Motion for Leave to File Notice of Supplemental Authority. Plaintiff shall FILE its Notice of Supplemental Authority as a separate entry on the docket in this matter on or before May 10, 2024. Signed by Judge Philip S. Hadji. (lrf) Service on parties made. (Entered: 05/06/2024)
05/07/2024	68	NOTICE of Additional Authority , filed by WILLIAM OLAS BEE. (Steensma, Darryl) (Entered: 05/07/2024)
05/14/2024	69	ORDER granting 65 Motion for Oral Argument. Oral Argument set for 6/4/2024 10:00 AM before Judge Philip S. Hadji. Signed by Judge Philip S. Hadji. (idb) Service on parties made. (Entered: 05/14/2024)
05/15/2024		Scheduled Proceeding Hearing Set: Oral Argument set for 6/4/2024 10:00 AM in Courtroom 7 before Judge Philip S. Hadji. (tb) (Entered: 05/15/2024)
05/28/2024	70	MOTION for Leave to File Defendant's Response to Plaintiff's Notice of Supplemental Authority and Defendant's Notice of Relevant DoD Guidance , filed by USA. Response due by 6/11/2024. (Attachments: # 1 Response and Notice with Exhibits)(Upton, Russell) (Entered: 05/28/2024)
05/30/2024	71	RESPONSE to 70 MOTION for Leave to File Defendant's Response to Plaintiff's Notice of Supplemental Authority and Defendant's Notice of Relevant DoD Guidance , filed by

		WILLIAM OLAS BEE. Reply due by 6/6/2024. (Steensma, Darryl) (Entered: 05/30/2024)
06/03/2024	72	ORDER granting 70 Motion for Leave to File. Response due by 6/7/2024. Signed by Judge Philip S. Hadji. (idb) Service on parties made. (Entered: 06/03/2024)
06/03/2024	73	RESPONSE to 68 Notice of Additional Authority <i>and Notice of Relevant DoD Guidance</i> , filed by USA. (Upton, Russell) (Entered: 06/03/2024)
06/04/2024		Minute Entry - Was the proceeding sealed to the public? No. If Yes, only parties to the case may order a copy of the transcript. Proceeding held in Washington, DC 6/4/2024 before Judge Philip S. Hadji: Oral Argument. [Total number of days of proceeding: 1]. Official record of proceeding taken via electronic digital recording (EDR). To order a certified transcript or an audio recording of the proceeding, click HERE .(mcb) (Entered: 06/04/2024)
06/20/2024	74	Notice of Filing Certified Transcript for proceedings held on June 4, 2024 in Washington, D.C. (aoc). (Entered: 06/20/2024)
06/20/2024	75	CERTIFIED TRANSCRIPT of proceedings held on 06/04/2024 before Judge Philip S. Hadji. Total No. of Pages: 1-63. Procedures Re: Electronic Transcripts and Redactions . To order a copy of the transcript, click HERE . Notice of Intent to Redact due 6/27/2024. Redacted Transcript Deadline set for 7/18/2024. Release of Transcript Restriction set for 9/16/2024. (aoc) (Entered: 06/20/2024)
08/23/2024	76	Plaintiffs 20 Motion for Judgment on the Administrative Record and the Governments 23 Cross Motion for Judgment on the Administrative Record and Motion to Dismiss are DENIED as moot. Signed by Judge Philip S. Hadji. (idb) Service on parties made. (Entered: 08/23/2024)
08/23/2024	77	OPINION granting the Government's 54 Motion for Judgment on the Administrative Record; denying Plaintiff's 47 Motion for Judgment on the Administrative Record; and denying the Government's 54 Motion to Dismiss. The Clerk of Court is directed to enter judgment accordingly. Signed by Judge Philip S. Hadji. (idb) Service on parties made. (Entered: 08/23/2024)
08/23/2024	78	JUDGMENT entered, pursuant to Rule 58, in favor of defendant. (Service on parties made.) (dls) (Entered: 08/23/2024)
09/06/2024	79	NOTICE OF APPEAL as to 77 Order on Motion for Judgment on the Admin. Record,, Order on Motion to Dismiss - Rule 12(b)(1),, Unreported Opinion, 78 Judgment, filed by WILLIAM OLAS BEE. Filing fee \$ 605, receipt number AUSFCC-9827226. Copy to CAFC. (Steensma, Darryl) (Entered: 09/06/2024)
09/09/2024		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re 79 Notice of Appeal. (ac7) (Entered: 09/09/2024)
09/12/2024		CAFC Case Number 2024-2306 for 79 Notice of Appeal, filed by WILLIAM OLAS BEE. (ac7) (Entered: 09/12/2024)

**IN THE UNITED STATES
COURT OF FEDERAL CLAIMS**

WILLIAM OLAS BEE

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 21-1970 C

COMPLAINT

1. Plaintiff William Olas Bee (“Plaintiff”), a Purple Heart recipient and former Staff Sargent and Infantry Unit Leader who completed four combat tours as a member of the U.S. Marine Corps (“Marine Corps”), brings this action against the U.S. Department of the Navy (“Navy”) after the Board for Correction of Naval Records (the “Board”) unlawfully found that Plaintiff’s combat-incurred traumatic brain injury (“TBI”) and post-traumatic stress disorder (“PTSD”) did not render him unfit for further military service, thus depriving Plaintiff of the benefits associated with medical retirement. The Navy’s decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law because the Navy failed to comply with Department of Defense Instructions (“DoDI”) 1332.38, which governs when a service member should be found unfit for continued service due to disability.

2. The Navy made multiple critical errors in the determining whether Plaintiff was unfit for duty under DoDI 1332.38. Most significantly, the Navy failed to address two of the three stated criteria for determining whether Plaintiff was fit for duty under DoDI 1332.38—whether the “medical condition represents a decided medical risk to the health of the member or to the

welfare of other members were the member to continue on active duty” and whether the “medical condition imposes unreasonable requirements on the military to maintain or protect the member”—either one of which individually was sufficient to establish Plaintiff was unfit for duty.

3. The Navy also failed to apply the correct legal standard for its analysis of a the one criteria it did consider. Specifically, DoDI 1332.38 required the Navy to evaluate whether Plaintiff was unable to perform “the duties of his office, grade, rank or rating” at the time of his discharge. Instead, the Navy evaluated whether Plaintiff, a Marine Rifleman and Infantry Unit Leader, was fit for active duty based on his performance as a temporary instructor for the Navy’s religious and medical personnel in lieu of evaluating Plaintiff’s ability to perform the duties that were required of him in his rating as a Marine Rifleman and Unit Infantry Leader.

4. Moreover, the Navy’s finding of fitness lacks substantial evidentiary support, as the record evidence overwhelmingly shows that Plaintiff’s medical conditions resulting from his TBI and PTSD rendered him unable to reasonably perform his duties as a Marine Rifleman and Infantry Unit Leader, that continued service with the Marines would put him at risk for future harm and jeopardize the welfare of other Marines, and that Plaintiff’s medical conditions would impose unreasonable requirements on the military to maintain and protect him.

5. Plaintiff thus brings this action against the United States for his disability retirement pay and benefits, and collaterally for the correction of his military records regarding the appropriate basis for his discharge from the Marine Corps.

NATURE OF THE ACTION

6. This is an action under 10 U.S.C. § 1201 for pay and benefits of medical retirement owed to Plaintiff due to his traumatic brain injury and post-traumatic stress disorder sustained

while on active duty, as well as a corresponding correction of Plaintiff's military records regarding the nature of Plaintiff's injuries at the time of his separation from the Marine Corps.

JURISDICTION

7. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. §§ 1491(a)(1)–(a)(2).

8. The statutory basis for invoking jurisdiction is 10 U.S.C. § 1201, which requires the payment of disability retirement compensation once a disability is found qualifying and, therefore, constitutes a money-mandating provision.

9. Plaintiff exhausted his administrative remedies by, among other things, seeking relief from the Board.

10. Plaintiff has suffered an injury in fact that can be determined in a specific amount.

11. Plaintiff's injury is traceable to the Navy's unlawful determination of disability retirement pay and benefits.

12. In accordance with 28 U.S.C. § 2501, this action is brought within six years of the date of Plaintiff's receipt of a final decision from the Board, which was dated August 5, 2019.

PARTIES

13. Plaintiff is a citizen of the United States and currently resides in North Carolina. Plaintiff served honorably in the Marine Corps for thirteen years.

14. Defendant is the United States of America, acting by and through the Department of Defense and Department of the Navy, both agencies of the United States government. This complaint may interchangeably refer to the Defendant as the "United States," "Defendant," "the Navy," or "the Marine Corps."

FACTUAL ALLEGATIONS

I. Military Disability Evaluation System

A. The DES Process

15. Chapter 61 of Title 10 of the U.S. Code establishes the Disability Evaluation System (“DES”) process through which the Navy and other military departments discharge disabled service members.

16. The DES process authorizes the Secretaries within the Department of Defense, including the Secretary of the Navy, to separate a service member when a Secretary determines that the service member is unfit to perform the duties of his or her office, grade, rank, or rating due to disability. Each Secretary has broad discretion to implement regulations for determining fitness for continued service. *See* 10 U.S.C. § 1216 (a)-(b).

17. The Secretary of the Navy Instruction (“NI”) 1850.4E establishes the DES process for Navy and Marine Corps service members under the provisions of Chapter 61 of Title 10 of the U.S. Code and DoDI 1332.38.

B. DES Referral

18. Commanding officers and individual medical officers are required to identify promptly for disability evaluation any service member having a physical impairment, which renders questionable the ability of service members to perform reasonably the duties of office, grade, rank, or rating. *See* NI 1850.4E encl. 1 § 1005, encl. 3 § 3106.

19. A DES referral must be made within one year from the date of diagnosis of a medical condition that does not appear to meet medical retention standards, but may be earlier if the examiner determines that the service member will not be capable of returning to duty within one year. *See* DoDI 1332.38 encl. 3, pt. 1, § E3.P1.6.1.

C. MEB Evaluation

20. After referral, the first phase of the DES process involves review by a Medical Evaluation Board (“MEB”) of an individual’s medical status and duty limitations. *See id.* § E3.P1.2.1.

21. The MEB is charged with determining whether any of a service member’s medical conditions render the service member unable to meet the retention standards set forth by the service member’s particular military branch. *See DoDI 1332.38 encl. 4, attach. 1, § E4.A1.1.2.11.2.*

22. The MEB does not state a conclusion of unfitness due to disability, or assign a disability percentage rating, but instead documents a medical opinion that informs the next phase of the DES process to the extent that it proceeds. *See NI 1850.4E encl. 3, § 3104.*

23. If the MEB decides that none of the service member’s medical conditions render the service member unable to meet retention standards, the member is returned to full active duty.

24. However, if the MEB decides that one or more of the service member’s medical conditions render the service member unable to meet retention standards, the member is referred to an informal Physical Evaluation Board (“PEB”) process within DES. *See DoDI 1332.38 encl. 4, § E4.A1.1.2.11.4; NI 1850.4E encl. 3, § 3201.*

D. PEB Process

25. Upon referral from an MEB, an informal PEB renders a decision on fitness. A service member can be found: (a) fit for duty; (b) unfit for duty but ineligible for disability benefits because, among other reasons, the disabling condition was not incurred in the line of duty, existed prior to service, was the result of intentional misconduct or willful neglect, or was incurred during an unauthorized absence; (c) unfit for duty and eligible for medical separation with disability

severance pay; or (d) unfit for duty and eligible for medical retirement with disability retirement pay and other benefits. *See generally* DoDI 1332.38

26. DoDI 1332.38 requires that a service member be found unfit if the evidence “establishes that the member, due to physical disability, is unable to reasonably perform duties of his or her office, grade, rank, or rating.” *See* DoDI 1332.38 encl. 3, § E3.P3.2.1. In making a determination of a member’s ability to so perform his or her duties, DoDI 1332.38 provides the following criteria for consideration: Whether the “medical condition represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty” and whether the “medical condition imposes unreasonable requirements on the military to maintain or protect the member.” *See id.* § E3.P3.2.2.

27. If a service member is found unfit and eligible for disability benefits (*i.e.*, under outcomes (c) or (d) above), the PEB must assign a percentage disability rating for each unfitting condition in accordance with Veterans Affairs Schedule for Rating Disabilities (“VASRD”) pursuant to 10 U.S.C. § 1216a. Title 10 of the U.S. Code and the rules of each of the service branches mandate that the armed forces follow the VASRD when rating the disability of service members found unfit for duty due to disability. *See* 10 U.S.C. §§ 1201, 1203; National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1642(a), 122 Stat 465 (codified at 10 U.S.C. § 1216a).

28. A PEB’s disability rating controls the amount of military benefits and services to which the service member is entitled upon discharge. A disability rating below 30 percent dictates that a service member is “medically separated” with a one-time, lump-sum, severance payment and no additional benefits. A disability rating of 30 percent or above dictates that a service member is “medically retired” with disability retirement pay and other benefits, such as

lifetime healthcare coverage and military commissary and exchange privileges. *See* 10 U.S.C. § 1201.

29. A service member found unfit may appeal the informal PEB’s decision in writing or in person at a formal PEB hearing with legal representation. *See* DoDI 1332.38 encl. 3, §§ E3.P1.3.3.4–3.3.5. A service member found fit for duty is not entitled to a formal PEB since a finding of fit does not cause involuntary separation due to disability. *See id.* § E3.P1.3.3.1.2.

I. PLAINTIFF’S MILITARY HISTORY

A. Plaintiff’s Rating

30. At the age of seventeen, Plaintiff enlisted in the Marine Corps and entered active duty on June 20, 2000. Upon completion of Marine recruit training, Plaintiff received his primary Military Occupational Specialty (“MOS”), otherwise known as a “rating,” which described his functional role within the Marine Corps.

31. Plaintiff’s rating was Rifleman, an infantry role, which is MOS number 0311 in the Marine Corps. All Marine infantrymen, including Riflemen, are required to be a “[n]aval oriented expeditionary warriors of final resort providing maximum versatility in chaotic and uncertain conditions of crisis and conflict; trained in core competencies of gunnery on infantry weapons, combat operations, and battlefield awareness; employing a variety of weapons, and through communications links, supporting arms including artillery, naval gunfire, and close air support; sea-based, projecting onto vital littorals in any climate or place, capable of the full spectrum of combat, day or night, against opposing forces with a full spectrum of capabilities” *See* Ex. 1 § 3110, ¶ 1 (MOS Manual). Within the Marine infantry, Riflemen are expected to employ the M16A2 service rifle, the M203 grenade launcher and the squad automatic weapon in order to serve as “primary scouts, assault troops, and close combat forces.” *See id.* ¶ 2.

32. Marine Corps doctrine and regulation provides, “Every Marine is a Rifleman.” This means that each Marine is expected to be ready, willing, and able to use standard infantry weapons and participate in the infantry’s traditional missions, including locate, close with, and destroy the enemy by fire and maneuver, and repel enemy assaults by fire, close-combat, and counterattack. *See id.* ¶ 1; Ex. 2 at 11-6 to -7 (Infantry T&R Manual) (listing an index of individual training events required of Marines with MOS rating 0311, Rifleman).

B. The Duties Required by Plaintiff’s Rating As Infantry Unit Leader

33. Throughout his career, Plaintiff held infantry ratings as a Rifleman and later as an Infantry Unit Leader, MOS 0369. *See* Ex. 3 at 1 (Certificate of Discharge); *see also* Ex. 4 at 14 (PTSD Evaluation). Plaintiff’s rating as an Infantry Unit Leader required him to serve and lead Marines in infantry units whose mission was to locate, close with, and destroy enemy forces by fire and maneuver, to kill or capture enemy fighters, and to repel enemy assaults by fire, close combat, and counterattack. *See* Ex. 5 at 1-1 to -2 (Infantry Rifle Platoon and Squad). Infantry leaders must be tacticians. They “must understand and use initiative in accomplishing the mission” and “they must know how to analyze the situation quickly and make decisions rapidly.” *See id.* at 1-3.

34. As an Infantry Unit Leader, Plaintiff was required to “control the fire and maneuver of his assigned section,” “locate, close with, and destroy the enemy by fire and maneuver,” “direct casualty collection and evacuation for his assigned section,” “request close air support,” and “navigate to designated points using a topographic map, lensatic compass, protractor, and global positioning equipment while dismounted and mounted,” among other requirements. *See* Ex. 2 at 9-13 to -26 (listing and describing 0369 Infantry Unit Leader Billet Descriptions/Core Capabilities/Events).

C. The Duties Required of All Marines

35. Due to his ratings as a Marine Rifleman and an Infantry Unit Leader, Plaintiff was required to maintain a high degree of proficiency in all of the capabilities listed above. However, even if Plaintiff had held an entirely different rating within the Marine Corps, he still would have needed to demonstrate proficiency in many of these infantry combat skills, because that is the standard required of every Marine, regardless of MOS, because Every Marine is a Rifleman.

36. The Marine Corps doctrine and regulation that “Every Marine is a Rifleman” means that all Marines are required to remain capable at all times of serving, when called upon, as provisional infantry. Regardless of whether a Marine’s rating is Clerk, Analyst, or Mechanic, each Marine is expected to be ready, willing, and able to use standard infantry weapons and participate in the infantry’s traditional missions of locate, close with, and destroy the enemy by fire and maneuver, and repel enemy assaults by fire, close-combat, and counterattack. *See* Ex. 1 § 3110, ¶ 1; Ex. 2 at 11-6 to -7 (listing an index of individual training events required of Marines with MOS rating 0311, Rifleman).

37. This requirement that every Marine achieve and maintain such combat capabilities is why the Marine Corps is unique among the armed services of the United States in that it has no non-combatants among its members. Unlike the Army, Navy, Air Force, and Space Force, there are no chaplains, medics, corpsmen, doctors, or nurses in the Marine Corps.

38. For these reasons, the Marine Corps, unlike the other armed services, requires all of its members, regardless of their rating, to maintain combat readiness throughout their careers. All Marines must demonstrate their ability to use infantry weapons, including services rifles or carbines, not just for the purposes of achieving accurate marksmanship, but also to employ such weapons in combat conditions.

39. The Marine Corps Combat Rifle Program progresses the individual Marine from the fundamentals of marksmanship to advanced combat shooting by ensuring service standards are reviewed, practiced, and evaluated. *See, e.g.*, Ex. 6 at iii - vi (Marine Corps Combat Marksmanship Program) (describing “Annual Rifle Training” requirements that Marines demonstrate proficiency in “Fundamental Marksmanship Skills” and “Combat Shooting Skills”). For the same reasons, all Marines must maintain proficiency in MCMAP close-combat techniques throughout their military careers. *See* Ex. 7 (MCMAP Order).

D. Plaintiff’s Service

40. Plaintiff’s military career began with his four-year service in an operational combat infantry unit. With this unit, Plaintiff deployed two times to Afghanistan. Plaintiff was first deployed from September 2001 until April 2002, and Plaintiff was subsequently deployed from October 2002 until December 2002. *See* Ex. 4 at 14.

41. Plaintiff was awarded the Combat Action Ribbon for his service in his initial deployment. *See* Ex. 8 at 5 (Individual Separation Information).

42. In 2004, after his initial combat infantry tour, Plaintiff transferred to a temporary role to work at a Recruiting Station. *See* Ex. 3 at 1; Ex. 8 at 7.

43. After three years as a Marine recruiter, Plaintiff returned to a combat infantry unit in 2007 when he began serving in the First Battalion of the Sixth Marine Regiment (“The 1/6”) and deployed a third time to Afghanistan. This third deployment lasted from December 2007 to September 2008. *See* Ex. 4 at 14.

44. On May 18, 2008 Plaintiff sustained a significant head injury. Plaintiff had just completed a four-hour rotation as Sergeant of the Guard and was washing his laundry by hand when he heard a gunshot. Without time to put on any protective body armor or even his helmet,

Plaintiff took up his rifle and responded to the threat. When he aimed his rifle over a stone wall, an enemy sniper's shot struck the wall, dislodging a rock that struck Plaintiff in the head, knocking him unconscious. *See* Ex. 9 at 2 (TBI Evaluation). The dramatic scene was captured by a photographer who was embedded with Plaintiff's unit.¹

45. Plaintiff earned the Navy and Marine Corps Achievement Medal with Combat Distinguishing Device with the Combat V for service in his third deployment. *See* Ex. 10 at 1-4 (Personal Awards).

46. On January 23, 2009, a post-deployment health reassessment diagnosed Plaintiff with a "[p]otential TBI with persistent symptoms" and noted a minor concern regarding PTSD. *See* Ex. 11 at 4-5 (Chronological Record of Medical Care, dated Jan. 23, 2009).

47. Despite his TBI and PTSD symptoms, Plaintiff deployed for his fourth and final time to Afghanistan from December 2009 until June 2010. *See* Ex. 4 at 14.

48. Plaintiff earned a second Navy And Marine Corps Achievement Medal with Combat Distinguishing Device with the Combat V for service in his fourth deployment. *See* Ex. 10 at 5-8.

49. On June 8, 2010, two days before his fourth deployment was scheduled to end, multiple improvised explosive devices ("IEDs") exploded along the exterior walls of a building that Plaintiff and other members of his squad were using as a forward observation area. The explosions collapsed the building, blew Plaintiff off of his feet, and knocked him unconscious for an extended period of time. His first memory after the blasts was waking up in a CT scanner at Camp Dwyer in Afghanistan.

¹ See David K. Li, *Marine pictured in iconic photos of Taliban firefight finally gets Purple Heart*, N.Y. POST (June 8, 2017), <https://nypost.com/2017/06/08/marine-pictured-in-iconic-photos-of-taliban-firefight-finally-gets-purple-heart/>

50. Two Marines under Plaintiff's command died instantly, and four other men in his squad ended up in the Intensive Care Unit along with Plaintiff. *See* Ex. 12 at 1-2 (Neuropsychological Evaluation); Ex. 9 at 2. Plaintiff subsequently learned that the remains of his fellow Marines who had perished in the blasts were initially stored in trash cans. *See* Ex. 4 at 15.

51. Due to the severity of his wounds, Plaintiff was medically evacuated from Afghanistan to Germany. *See id.* at 14; *see also* Ex. 12. Plaintiff was awarded the Purple Heart Medal for the wounds he received in action on June 8, 2010. *See* Ex. 10 at 9-10.

E. Plaintiff's Unfitting Conditions

52. On June 16, 2010, while still overseas, Plaintiff had a positive TBI screening. *See* Ex. 13 (Chronological Record of Medical Care, dated June 16, 2010). Plaintiff was referred to physical therapy and occupational therapy and informed he needed to schedule follow-up appointments with a neurologist stateside to address his symptoms of ataxic gait, short term memory loss, and decreased concentration. *See id.*

53. Upon his return to Camp Lejeune, North Carolina, on June 21, 2010, Plaintiff still had difficulty walking and recurrent vertiginous episodes as a result of the blast exposure.

54. Plaintiff was placed on limited duty ("LIMDU") status through about December 20, 2010. *See* Ex. 14 at 1 (Board Denial).

55. On July 28, 2010, Plaintiff was diagnosed with PTSD. *See* Ex. 9 at 3; Ex. 12.

56. Plaintiff continued medical treatment for his TBI in August and September 2010 with the Neurology Clinic due to continued difficulty walking, vertigo with a wobbly and unsteady gait, tinnitus, hearing loss and multiple perforations in both ears. *See* Ex. 15 (Chronological Record of Medical Care, dated Sept. 29, 2010).

57. On October 4, 2010, Dr. Johnson, a Clinical Neuropsychologist with the Carolina Psychological Health Services, issued a Neuropsychological Evaluation of Plaintiff, based on clinical evaluations in July and September 2010. *See* Ex. 12.

58. Dr. Johnson diagnosed Plaintiff with cognitive disorder, chronic moderate PTSD and a Global Assessment of Functioning (“GAF”) score of 40-45.² *See id.* at 11. Dr. Johnson’s diagnosis of Plaintiff specifically notes “concern regarding his future.” *Id.* at 11.

F. Plaintiff’s Removal from Operational Service

59. In November 2010, Plaintiff was transferred from his infantry battalion to a temporary position as a “Military Instructor” for medical and religious personnel at the Navy Field Medical Training Battalion (“*FMTB*”) in Camp Johnson, North Carolina. *See* Ex. 17 at 1, 6, 11 (*FMTB* FitReps, dated Jan. 1, 2011 through Apr. 1, 2013).

60. Prior to his transfer to the *FMTB*, Plaintiff was removed early from LIMDU so that Plaintiff could receive his promotion to Staff Sargent.

61. Plaintiff’s continued placement on LIMDU after his transfer to the *FMTB* was unnecessary due to his position at the *FMTB* being limited to ensuring Navy medical and religious program personnel had the requisite knowledge, skills, and abilities necessary to serve with and support Marine Corps units.

62. At the *FMTB*, Plaintiff did not teach or perform any of the Marine Corps traditional missions of locate, close with, and destroy the enemy by fire and maneuver, and repel enemy assaults by fire, close-combat, and counterattack.

² A GAF score of 40-45 qualifies as “Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” *See* Ex. 16 at 34 (AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, (4th ed. 2000).

63. Plaintiff served as a “Military Instructor” for the Navy’s medical and religious personnel until his discharge on April 1, 2013. During this time, Plaintiff’s received Fitness Reports (“FitReps”), which are formal performance and proficiency evaluations. *See id.*

64. Plaintiff’s FMTB FitReps were in the same format as the FitReps he had previously received during his infantry service with The 1/6. However, Plaintiff’s FMTB FitReps differed from his infantry FitReps in several important respects:

- a. Whereas Plaintiff’s Reporting Seniors (his primary evaluators who prepared his FitReps) and his Reviewing Officers (the supervising officers who reviewed and approved his FitReps) in The 1/6 were Marine Corps infantry officers, who were specialists in infantry combat operations; in contrast, his Reporting Seniors and his Reviewing Officers at the FMTB were Navy officers, who specialized in medical and/or religious support services.
- b. Whereas the FitReps Plaintiff received at The 1/6 evaluated Plaintiff’s performance and proficiency as an infantry squad leader, platoon sergeant, and mortar section leader, all of which are doctrinal roles of a Rifleman or Infantry Unit Leader; in contrast, his FitReps at the FMTB evaluated his performance as a “Military Instructor” and “Military Advisor/Military Subject Instructor” which are not even roles of infantry Marines.
- c. Whereas the FitReps Plaintiff received in The 1/6 evaluated Plaintiff’s performance and proficiency in such skills as the tactical deployment and use of explosive mortar weapons in support of combat missions, which are doctrinal skills of an Infantry Unit Leader; in contrast, his FitReps at the FMTB evaluated none of these or any other Marine infantry skills.

- d. Whereas the peers to whom Plaintiff was compared in The 1/6 FitReps were infantry Marines; in contrast, the peers to whom Plaintiff was compared in his FMTB FitReps were mostly or entirely non-infantry Navy personnel, including medical and religious program personnel.

65. The FitReps Plaintiff received at the FMTB did not indicate that Plaintiff was capable of serving as a Rifleman or Infantry Unit Leader in a Marine Corps infantry unit, nor did they indicate that Plaintiff was capable of performing the provisional infantry duties that would be required of him if he were reassigned to a different Marine Corps unit, or a different Marine Corps rating.

66. During the time Plaintiff was serving as a “Military Instructor” he was effectively precluded from earning further promotion because he was serving in a role outside of his rating.

67. Only by returning to an operational unit could Plaintiff have demonstrated his ability to lead infantry Marines, and thereby earn promotion to command larger and more complex infantry units at the next higher rank, which in Plaintiff’s case would have been the rank of Gunnery Sergeant.

68. Unfortunately for Plaintiff, he was medically unfit to return to service with the Marines Corps due to his persistent medical conditions, including TBI and PTSD, which he incurred during combat.

G. Plaintiff’s Separation from the Military

69. In late 2012, Plaintiff, aware that he could not return to an operational infantry position, entered the Marine Corps’ Voluntary Separation Program (“VSP”), which incentivizes military members with a lump-sum payment to leave service early. But the VSP was anything but “voluntary” for Plaintiff under the circumstances.

70. Lacking any realistic opportunity to earn promotion, Plaintiff faced the near certainty of being involuntarily discharged from the Marine Corps under the up-or-out system. Under the up-or-out system, a Marine that does not continue to achieve promotions is involuntarily discharged.

71. In particular, an enlisted Marine in Plaintiff's rank and rating first becomes eligible for promotion on or about the third anniversary of their promotion to their current rank. If the Marine fails to earn promotion at this first opportunity, they will become eligible for promotion one more time three years later.

72. If the Marine fails to earn promotion a second time, they will be involuntarily discharged. These requirements, known as the "up-or-out" system, generally result in a Marine being involuntarily discharged after serving six years in their current rank if they do not earn promotion.

73. By entering into the VSP program, Plaintiff received a monetary separation payment, and his End of Active Service date was moved up from June 2013 to April 2013.

H. Plaintiff's PTSD and TBI Symptoms At Discharge

74. In January 2013—several months before his discharge—Plaintiff was given thorough evaluations for his TBI and PTSD and was further diagnosed with Post-Concussion Syndrome/Cognitive Impairment, Primary Insomnia, Generalized Anxiety Disorder, Panic Disorder with Agoraphobia, and Major Depressive Disorder. *See* Ex. 9; Ex. 4.

75. The PTSD Evaluation established that Plaintiff suffered from numerous debilitating PTSD symptoms that made him unfit for duty with the Marine Corps.

76. For example, the evaluation indicated Plaintiff received "an inadequate amount, and deficient quality, of sleep" that was usually "interrupted by intrusive disturbing thoughts,

images, dreams;” that Plaintiff suffered from “persistent, intrusive, and disruptive symptoms of anxiety on a daily basis” and experienced “recurrent episodes of intense, panic-level anxiety. . . . on an almost continuous basis;” and that Plaintiff’s debilitating anxiety had led to Plaintiff contemplating suicide. *See* Ex. 4 at 10-12.

77. Plaintiff was given a global assessment of functioning (GAF) score of 40, which means “[s]ome impairment in reality testing or communication (e.g., speech is at time illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgement, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work)” *See id.* at 11; Ex. 16 at 34.

78. Plaintiff also suffered from daily moderate headaches, one to two migraines per month, dizziness, noise sensitivity, chronic fatigue, difficulty concentrating, blurred or double vision, and sensitivity to light, among other symptoms of PTSD. *See* Ex. 4 at 17-18.

79. The PTSD Evaluation concluded that Plaintiff needs to seek follow up treatment that is of very high quality in order to alleviate the many symptoms and various conditions which have developed while Plaintiff has been in the service. *See id.*

80. The TBI Evaluation established that Plaintiff suffered from numerous incapacitating TBI symptoms that made him unfit for duty with the Marine Corps. For example, Plaintiff suffered from “substantial and persistent” memory deficits. *See* Ex. 9 at 3.

81. Plaintiff had difficulty remembering what he was told or what was said, and he had “difficulty maintaining attention or concentration on a task or on someone speaking for more than a moment’s time.” *See id.*

82. The TBI Evaluation found that Plaintiff had moderately impaired judgement, and that for complex or unfamiliar decisions, Plaintiff was “usually unable to identify, understand, and

weigh the alternatives, understand the consequences of choices, and make a reasonable decision” *See id.* at 4.

83. The TBI Evaluation also found that Plaintiff was “[o]ccasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation.” *See id.*

84. The TBI Evaluation found that Plaintiff “usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions and judging distances [and h]as difficulty using assistive devices such as GPS (global positioning system).” *See id.* at 5.

85. The TBI Evaluation found that Plaintiff “experiences difficulty staying on task; planning; organizing; remembering; processing and storing incoming data; and mastering new material. His irritability, anxiety, anger, and memory deficits reduce his level of daily functioning.” *See id.* at 8.

86. The TBI Evaluation also noted Plaintiff suffered from “daily moderate headaches; one to two migraines per month; dizziness; ... noise sensitivity; chronic fatigue; difficulty concentrating; blurred or double vision; ... and sensitivity to light.” *See id.* at 2.

87. A report from Plaintiff’s final physical exam, dated February 18, 2013, noted that Plaintiff was still suffering from various symptoms stemming from his TBI and/or PTSD, including difficulty in walking, dizziness, vertigo, lightheadedness, memory lapses, anxiety and difficulty sleeping, among other things. *See Ex. 18 at 4, 7* (Chronological Record of Medical Care, dated Feb. 13, 2013).

I. Veterans Affairs Disability Rating

88. In January 2013, prior to his separation from the Marines, Plaintiff filed a Veteran’s Pre-Discharge Compensation Claim with the VA. *See* Ex. 19 at 4 (VA Rating Decision, dated Sept. 12, 2013).

89. On October 10, 2013, the VA informed Plaintiff of its rating decision for Plaintiff’s TBI and PTSD based on his in-service PTSD and TBI Evaluations. *See* Ex. 20 (VA Rating Decision, dated Oct. 10, 2013).

90. The VA assigned a disability rating of 70% for Plaintiff’s PTSD, general anxiety disorder, panic disorder with agoraphobia, and major depressive disorder. *See id.*

91. The VA assigned a separate disability rating of 70% for Plaintiff’s TBI, post-concussion syndrome, and cognitive impairment. *See id.*

92. The VA concluded that Plaintiff’s TBI symptoms satisfied a “3” level of severity—the most severe rating possible on a 0-3 scale—for his memory, attention, concentration, executive functions facet, based on objective evidence, resulting in “moderate functional impairment.” *See id.* at 4.

93. These ratings were based in part on the TBI Evaluation and the PTSD Evaluation that were performed on Plaintiff in January 2013 prior to his separation from the Marine Corps. *See id.* at 2.

J. The Board’s Unlawful Failure to Correct Plaintiff’s Records

94. In April 2018, after struggling with his medical conditions for nearly eight years, Plaintiff sought correction of his military records from the Board to reflect medical retirement status due to his TBI and PTSD conditions causing him to be unfit for duty at his time of separation.

95. In a letter accompanying his petition to the Board, Plaintiff presented his case that, from the date of his combat injuries in June 2010 until the date of his discharge from the Marines in April 2013, he was unable to fulfill the duties of a Marine Rifleman or Infantry Unit Leader.

96. In support of his unfitness, Plaintiff highlighted, among other things, the fact that, before his discharge, he had not served in his infantry MOS for over two years, that his discharge exam indicated he continued to suffer from difficulty walking, dizziness, vertigo, lightheadedness, memory lapses, anxiety and difficulty sleeping, and that his TBI Evaluation and PTSD Evaluation conducted pursuant to his Pre-Discharge Compensation Claim and resulting VA ratings established that he suffered from severe duty-limiting medical conditions caused by his PTSD and TBI, which clearly left him incapable of returning to the required duties of his office, grade, rank and rating.

97. Plaintiff also presented a report from Dr. Michael Blumenfield, a board certified physician in the fields of psychiatry and psychosomatic medicine, in support of his petition to the Board. *See* Ex. 21 (Medical Report from Dr. Blumenfield).

98. Dr. Blumenfield's report was based on a review of Plaintiff's medical history and an interview conducted with Plaintiff via Skype videoconference. Dr. Blumenfield's reports states that, in his opinion, "it is clearly documented that after [Plaintiff's] injury in 2010 through the time period in which he was discharged, he would not have been able to fulfill the duties as a rifleman in the Marine Corps" and "that if a full medical board had been convened and given the clinical facts documented in [Plaintiff's] record that they would have found that [Plaintiff] was not fit for duty as a rifleman in the Marine Corps." *See* Ex. *id.* at 4.

99. In accordance with Board procedures, Plaintiff's records were referred to the Board's Senior Psychiatric Advisor ("Advisor").

100. The Advisor's recommendation is advisory only, and is not binding upon the Board or the Secretary of the Navy.

101. The Advisor recommended denying Plaintiff's petition in a letter dated April 4, 2019. *See* Ex. 22 (Medical Advisor Comments and Recommendation). The Advisor's recommendation failed to evaluate whether the well-documented performance limitations caused by Plaintiff's TBI and PTSD were compatible with the duties of Plaintiff's office, grade, rank or rating.

102. The Advisor's recommendation also failed to evaluate whether Plaintiff's disability represented a decided medical risk to Plaintiff's health or to the welfare or safety of other members of the military, and it also failed to evaluate whether Plaintiff's disability imposed unreasonable requirements on the military to maintain or protect Plaintiff. *See id.*

103. Rather than apply the actual standards of fitness to the facts of the Plaintiff's case, the Advisor pronounced the Plaintiff fit based on his "pattern of treatment," his prescription refills, and his FMTB FitReps from Plaintiff's time outside of his MOS. *See id.* at 2.

104. On August 5, 2019, the Board denied Plaintiff's petition for relief in a two-and-a-half page letter that was arbitrary, capricious, unsupported by substantial evidence, and contrary to law. *See* Ex. 14.

105. The Board's decision was arbitrary, capricious, unsupported by substantial evidence and contrary law due, in part, to the Board's failure to correctly consider the fitness criteria set forth in DoDI 1332.38, its improper reliance on the FMTB FitReps from Plaintiff's time outside his MOS, and its failure to consider Plaintiff's duty-limiting medical conditions documented by Plaintiff's in-service medical records, the VA ratings based on those in-service medical records, and Dr. Blumenfield's medical report.

106. The Navy's errors in the disability evaluation process caused and are continuing to cause significant financial harm to Plaintiff.

107. Had the Navy considered the entire record and evaluated the record against Plaintiff's duties under his actual rating instead of his ability to perform a job wholly outside his rating, Plaintiff would have been awarded a medical retirement and associated benefits.

108. The Board's decision therefore deprived Plaintiff of the retirement pay and medical benefits to which he is entitled under 10 U.S.C. § 1201.

COUNT I

109. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as if set forth in their entirety herein.

110. Plaintiff has exhausted his administrative remedies with the Navy.

111. Title 10 U.S.C. § 1201 confers a substantive right to monetary benefits against the United States by specifying the disability retirement pay and benefits to which a qualified service member is entitled thereunder.

112. By finding Plaintiff's TBI and PTSD not to be unfitting conditions without applying the proper legal standard under DoDI 1332.38, and without assessing all three criteria that could each individually result in finding Plaintiff unfit for service as a Marine Rifleman and Infantry Unit Leader, the Board's August 2019 decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law. Specifically, the Board's decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law because:

- a. It failed to address, let alone assess, whether Plaintiff's TBI or PTSD represents a decided medical risk to the health of the member or to the

welfare or safety of other members under the second criteria of DoDI 1332.38.

- b. It failed to address, let alone assess, whether Plaintiff's TBI or PTSD imposes unreasonable requirements on the military to maintain or protect the service member under the third criteria of DoDI 1332.38.
- c. It applied the wrong legal standard for determining fitness for service by failing to properly assess, based on the first criteria of DoDI 1332.38, whether Plaintiff's TBI or PTSD rendered him unfit based on his "office, grade, rank, or rating." Contrary to law, the Board instead assessed Plaintiff's fitness based on his ability to perform unspecified and undefined "Military Instructor" duties that he was given precisely because of his unfitting medical conditions and which were unrelated to Plaintiff's MOS as Marine Rifleman and Infantry Unit Leader.
- d. It failed to consider the complete factual record and is unsupported by the ample record evidence demonstrating Plaintiff was unable to perform continuing duties as a Marine Rifleman due to his TBI and/or his PTSD, Plaintiff would have been exposed to decided medical risk to his health, and that Plaintiff's medical condition would have imposed unreasonable requirements on the military to maintain or protect him.

113. As a direct result of the unlawful decision of the Board, Plaintiff has been and continues to be, deprived of the disability retirement pay and medical benefits to which he is entitled under 10 U.S.C. § 1201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff William Olas Bee prays that this Court enter judgment against Defendant and grant the following relief:

- a. Award Plaintiff money and other benefits in nature in an amount to be determined at trial;
- b. Order Plaintiff's military records be corrected to reflect the medical retirement to which he is entitled;
- c. Award Plaintiff interest, costs, and attorneys' fees; and
- d. Grant any such other and further relief as the Court deems just and proper.

Dated: October 6, 2021

Respectfully submitted,

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EXHIBIT 6



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO
MCO 3574.2K
C476
01 AUG 2007

MARINE CORPS ORDER 3574.2K

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS COMBAT MARKSMANSHIP PROGRAMS

Ref: (a) MCRP 3-01A, Rifle Marksmanship
(b) MCRP 3-01B, Pistol Marksmanship
(c) Combat Marksmanship Detailed Instructor Lesson Plans
(d) Entry Level Pistol (ELP) Marksmanship Instructor Lesson Plans
(e) MCO P1080.40C
(f) MCO 1510.89B
(g) MCO 1510.90A
(h) MCO P1610.7F
(i) MCO 3570.1B

Encl: (1) Marine Corps Combat Rifle Program
(2) Regulations Governing Training/Evaluation with the M9 Service Pistol

1. Situation. This Order establishes Marine Corps policy and prescribes requirements governing entry-level marksmanship and annual marksmanship training, per references (a) through (i). The Marine Corps' primary mission is to locate, close with, and destroy the enemy by fire and maneuver and to repel assault by fire and close combat during amphibious assaults and subsequent operations ashore. Combat-ready Marines must be skilled in tactics and highly proficient in the use of firearms. Well-trained Marines have the confidence required to deliver accurate fire under the most adverse battle conditions. The rifle is the primary means by which Marines accomplish their mission.

2. Cancellation. MCO 3574.2J w/Ch 1. The Marine Corps Combat Marksmanship Program has established new rifle qualification standards at the entry-level and annual sustainment level governed by MCO 3574.2K. The new qualification standards and course of fire is designed to develop fundamentals of combat marksmanship. The overall execution of the new Combat Marksmanship Program is to develop the Marine's ability to employ the service rifle and service pistol effectively utilizing the 4 Training Tables. NOTE: Table 1 is conducted at Entry Level Sites (Recruit Depots, The Basic School); Table 1A is conducted at posts and stations for Annual Rifle Training.

3. Mission. This Order establishes Marine Corps policy and prescribes requirements governing the Marine Corps Combat Marksmanship Program to include initial qualification and annual re-qualification with the service rifle and pistol.

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

Appx1084

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EXHIBIT 16

**DIAGNOSTIC AND STATISTICAL
MANUAL OF
MENTAL DISORDERS**

FOURTH EDITION

TEXT REVISION

DSM-IV-TR™



Published by the
American Psychiatric Association
Washington, DC

Global Assessment of Functioning (GAF) Scale

Consider psychological, social, and occupational functioning on a hypothetical continuum of mental health–illness. Do not include impairment in functioning due to physical (or environmental) limitations.

Code (Note: Use intermediate codes when appropriate, e.g., 45, 68, 72.)

- 100 **Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms.**
- 91
- 90 **Absent or minimal symptoms** (e.g., mild anxiety before an exam), **good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns** (e.g., an occasional argument with family members).
- 81
- 80 **If symptoms are present, they are transient and expectable reactions to psychosocial stressors** (e.g., difficulty concentrating after family argument); **no more than slight impairment in social, occupational, or school functioning** (e.g., temporarily falling behind in schoolwork).
- 71
- 70 **Some mild symptoms** (e.g., depressed mood and mild insomnia) **OR some difficulty in social, occupational, or school functioning** (e.g., occasional truancy, or theft within the household), **but generally functioning pretty well, has some meaningful interpersonal relationships.**
- 61
- 60 **Moderate symptoms** (e.g., flat affect and circumstantial speech, occasional panic attacks) **OR moderate difficulty in social, occupational, or school functioning** (e.g., few friends, conflicts with peers or co-workers).
- 51
- 50 **Serious symptoms** (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) **OR any serious impairment in social, occupational, or school functioning** (e.g., no friends, unable to keep a job).
- 41
- 40 **Some impairment in reality testing or communication** (e.g., speech is at times illogical, obscure, or irrelevant) **OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood** (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).
- 31
- 30 **Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment** (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) **OR inability to function in almost all areas** (e.g., stays in bed all day; no job, home, or friends).
- 21
- 20 **Some danger of hurting self or others** (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement) **OR occasionally fails to maintain minimal personal hygiene** (e.g., smears feces) **OR gross impairment in communication** (e.g., largely incoherent or mute).
- 11
- 10 **Persistent danger of severely hurting self or others** (e.g., recurrent violence) **OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.**
- 1
- 0 Inadequate information.

The rating of overall psychological functioning on a scale of 0–100 was operationalized by Luborsky in the Health-Sickness Rating Scale (Luborsky L: "Clinicians' Judgments of Mental Health." *Archives of General Psychiatry* 7:407–417, 1962). Spitzer and colleagues developed a revision of the Health-Sickness Rating Scale called the Global Assessment Scale (GAS) (Endicott J, Spitzer RL, Fleiss JL, Cohen J: "The Global Assessment Scale: A Procedure for Measuring Overall Severity of Psychiatric Disturbance." *Archives of General Psychiatry* 33:766–771, 1976). A modified version of the GAS was included in DSM-III-R as the Global Assessment of Functioning (GAF) Scale.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendants.

Case No. 21-1970
(Senior Judge Loren A. Smith)

**PLAINTIFF WILLIAM OLAS BEE'S MOTION FOR JUDGMENT ON THE
ADMINISTRATIVE RECORD**

Dated: March 16, 2022

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Appendix



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

MCO 1200.17
C 469
23 MAY 2008

MARINE CORPS ORDER 1200.17

From: Commandant of the Marine Corps
To: Distribution List

Subj: MILITARY OCCUPATIONAL SPECIALTIES (MOS) MARINE CORPS MANUAL (SHORT
TITLE: MOS Manual)

Ref: (a) MCO 1200.15B, MOS System Modification Process

Encl: (1) MOS Manual

Report Required: DOD Enlisted/Officer Occupational Conversion Table (Report
Control Symbol DD-1200-02) (EXTERNAL RCS DD-P&R 959),
par. 0006.3

1. Situation. Each year the Marine Corps Human Resource Development Process is synchronized through publication of this Order. This Order defines occupational specialties found on tables of organization and otherwise provides information that will enable the Marine Corps to carry out its assigned mission to organize, train, assign, and manage the force. This revision has been conducted in accordance with the reference and it contains substantial changes and must be scrutinized carefully. OccFld 31 is renamed Distribution Management and a new enlisted OccFld 48 has been created. MOS 0143 has changed to MOS 4821. There are new MOSs in OccFlds 02, 30, and 44 and MOS are deleted from OccFlds 28, 35, 44, 55 and 64. Grade structure changes are made in OccFlds 28, 55, 61 and 62. Other significant changes are made in OccFlds 01, 03, 04, 06, 09, 11, 18, 26, 27, 31, 34, 43, 58, 60, 62, 66, 73 and 80.

2. Cancellation. MCBul 1200 of 28 Mar 2007 (canc: Apr 2008).

3. Mission. The Total Force Structure Management System and the Marine Corps Total Force System will be updated using common MOS codes from this enclosure (1) to this Order to accurately provide the operating forces the inventory of Marines trained in the required skills to conduct unit missions.

4. Execution. Commanding Officers of schools and all personnel associated with the Marine Corps Occupational System shall familiarize themselves with enclosure (1) to this Order and make all MOS changes as summarized in chapters 2 and 4, Officer/Enlisted Conversion Guidance, and as further guided by the reference and the Deputy Commandant of the Marine Corps, Manpower and Reserve Affairs.

5. Administration and Logistics. The MOS and chart will be distributed in April/May 2008. Recommendations for improving or modifying the Marine Corps Occupational System are invited. Refer to the Introduction to enclosure (1) for the procedure to submit recommended changes/modifications.

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Corps Occupational System. The Commanding General, Marine Corps Combat Development Command, as the owner of the Expeditionary Force Development System, is responsible for developing Marine Corps combat requirements including doctrine, organization, training and personnel. Organizational requirements are set forth in Tables of Organization (T/O). T/Os are tabulated with number codes derived from the Marine Corps Occupational System. The codes define the different individual skills required by units. The same numbers are used by the Deputy Commandant, Manpower and Reserve Affairs to develop and maintain a personnel inventory of skilled Marines to meet the organizational requirements of the units. The Occupational System by necessity must be somewhat rigid in its process and categorization to maintain accuracy of the meaning of the number codes. To maintain flexibility, the Manual will be reviewed and revised regularly, usually once a year.

1. General

a. The Marine Corps Occupational System uses a four-digit number code constructed on the concept that occupations with similar skill, knowledge, or functional application requirements are grouped into functional areas, known as occupational fields (OccFlds), and skill-knowledge sets, known as Military Occupational Specialties (MOSs). This provides for efficient and effective classification, assignment, and utilization of Marine Corps personnel. The Occupational System identifies Marine Corps personnel, duties, skill-knowledge attributes, and requirements within the specific functional areas.

b. OccFlds are identified by the first two digits of the four-digit code and a descriptive title. The OccFld is a grouping of related MOSs. Criteria to be considered in establishment of an OccFld include the total number of Marines in the OccFld, the number of MOSs (diversity), unity of functional management, and training requirements.

c. The MOS is a four-digit code consisting of the OccFld code completed by two additional digits. It describes a set of related duties and tasks that extend over one or more grades required by units of the Operating Forces and Supporting Establishment.

(1) The MOS is used to identify skill-knowledge requirements of billets in T/Os, to assign Marines with capabilities appropriate to required billets, and to manage the force.

(2) Criteria to be considered in establishment and type (see glossary, table 0-1) of an MOS include the number of Marines required in the specialty, deployment rotation base, training requirements, specialty requirements/prerequisites, and career potential.

d. MOSs will not be created without corresponding requirements in tables of organization. Requests for MOSs to keep track of skills without valid T/O requirements are referred to other manpower and personnel inventory management systems.

2. Certification

a. MOSs are awarded when performance based criteria have been met as set forth in the Individual Training Standards (ITS) and Training and Readiness (T&R) Manuals. The simulated environment of a formal school and the actual work environment on the job are both suitable for entry-level performance evaluation under controlled evaluations by competent authority. Every effort should be made to train at MOS producing schools so that unit commanders can dedicate their resources to mission oriented objectives.

b. Unless noted in the specific MOS entry in this Manual, consistent with MCO P1000.6 (ACTS Manual) and MCO P1001.1R (MCRAM), certification to award an enlisted MOS shall be authorized when any of the following conditions are met:

3110. OCCUPATIONAL FIELD 03, INFANTRY

1. Introduction. Naval oriented expeditionary warriors of final resort providing maximum versatility in chaotic and uncertain conditions of crisis and conflict; trained in core competencies of gunnery on infantry weapons, combat operations, and battlefield awareness; employing a variety of weapons, and through communications links, supporting arms including artillery, naval gunfire, and close air support; sea-based, projecting onto vital littorals in any climate or place, capable of the full spectrum of combat, day or night, against opposing forces with a full spectrum of capabilities, including NBC; using maneuver warfare to locate, close with, and destroy the enemy by fire and maneuver; either on foot or mounted on trucks, assault vehicles, assault craft, or vertical assault aircraft; able to secure and defend self and vital terrain by repelling the enemy's assault by fire, maneuver, and close combat; cultivated in a leadership continuum that develops the basic warrior through experience and coaching into a fully qualified noncommissioned officer and staff noncommissioned officer, a combat leader of Marines who trains and directs the actions of Marines in teams, sections, squads, and platoons, while coordinating with higher and adjacent units and supporting units.

2. MOS 0311, Rifleman (Sgt to Pvt) PMOS

a. Summary. The riflemen employ the M16A2 service rifle, the M203 grenade launcher and the squad automatic weapon (SAW). Riflemen are the primary scouts, assault troops, and close combat forces available to the MAGTF. They are the foundation of the Marine infantry organization, and as such are the nucleus of the fire team in the rifle squad, the scout team in the LAR squad, scout snipers in the infantry battalion, and reconnaissance or assault team in the reconnaissance units. Noncommissioned officers are assigned as fire team leaders, scout team leaders, rifle squad leaders, or rifle platoon guides.

b. Prerequisites. Must possess a GT score of 80 or higher.

c. Requirements. Complete the Marine Rifleman Course at the School of Infantry, East or West.

d. Duties. For a complete listing of duties and tasks, refer to NAVMC Directive 3500-87, Training and Readiness Manual.

e. Related DOT Classification/DOT Code. Combat Rifle Crewmember.

f. Related Military Skill

(1) Machine Gunner, 0331.

(2) Infantry Assaultman, 0351.

3. MOS 0312, Riverine Assault Craft (RAC) Crewman (GySgt to PFC) FMOS

a. Summary. The RAC crewman performs duties as either coxswain for the RAC or employs the onboard weapons systems (M240G, M2, MK-19).

b. Prerequisites

(1) GT score of 90 or higher.

(2) Must be a minimum Combat Water Survival, Second Class (CSW-2).

c. Requirements

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CHAPTER 9

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Core Capabilities:

1. Assume staff responsibility for organization, training, and tactical operations of an infantry battalion/regiment.
2. Responsible for planning, coordinating, and supervising tactical employment of units.
3. Responsible for integrating fires and maneuver to support accomplishment of battalion/regiment tactical mission.
4. Responsible for determining priorities for allocation of personnel, weapons, equipment, and ammunition.
5. Make operational planning recommendations to the Battalion/Regimental Commander.
6. Prepare battalion/regiment reports and briefs.
7. Perform self-aid and buddy aid.
8. Assume mission oriented protective posture against the effects of chemical and biological agents.
9. Communicate using proper communications procedures with organic wired and wireless communications.
10. Proficient marksman with T/O weapon.

BILLET: Executive Officer, Infantry Battalion/Regiment

The Executive Officer, Infantry Battalion/Regiment, carries out the orders of the Commanding Officer, Infantry Battalion/Regiment. He serves in the role of Commander in his absence. A Major holds the Executive Officer, Infantry Battalion billet. The Executive Officer, Infantry Regiment billet is held by a Lieutenant Colonel.

Core Capabilities:

1. Second in command, assumes command in commander's absence.
2. Coordinate all action of the battalion/regiment staff.
3. Supervise staff planning process.
4. Supervise operation of the main echelon.
5. Ensures battalion/regiment reports are made as required to higher and adjacent commanders.
6. Supervise planning of future operations.
7. Maintain awareness of all information flow to Battalion/Regiment Commander.
8. Proficient marksman with T/O weapon.

BILLET: Commanding Officer, Infantry Battalion/Regiment, Infantry Division

The Commanding Officer, Infantry Battalion/Regiment, carries out the orders of the Commanding Officer, Infantry Battalion/Commanding General, Infantry Division. He carries, performs operator maintenance for, and is a proficient marksman with the M9 service pistol. He is responsible for deployment and tactical employment of his unit. He is responsible for the discipline, morale, and welfare of his unit. The Commanding Officer, Infantry Battalion billet is held by a Lieutenant Colonel. A Colonel holds the Commanding Officer, Infantry Regiment billet.

Core Capabilities:

1. Responsible for effective command and control of a battalion/ regiment.
2. Disseminate guidance and intent to subordinate commanders.
3. Train the battalion/regiment in the performance of tasks that support mission objectives.

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4. Maintain the welfare and discipline of a battalion/regiment.
5. Proficient marksman with T/O weapon.

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The Machinegun Section Leader carries out the orders of the Platoon Commander or unit leader. He is responsible for the discipline, appearance, training, control, conduct, and welfare of his section at all times, as well as the condition, care, and economical use of its weapons and equipment. The Machinegun Section Leader is responsible for employing his section in General Support (GS), Direct Support (DS), and as attachments in order to support the company scheme of maneuver. In combat, he is also responsible for the tactical employment, fire discipline, fire control, and effective employment of the machinegun squads as attachments to other units. His rank is Staff Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a Machinegun Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his section in the performance of tasks that support platoon and/or company training objectives.
5. Perform operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned section.
8. Direct casualty collection and evacuation for his assigned section.
9. Perform integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned section.
11. Coordinate and supervises the embarkation and debarkation of his assigned section.
12. Perform operator maintenance for and are a proficient marksman with the service rifle/carbine and M9 pistol.
13. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
14. Navigate to designated points using a topographic map, lensatic compass, protractor, and global positioning equipment while dismounted and mounted.
15. Communicate using proper communications procedures with organic wired and wireless communications.
16. Call for and adjust indirect fire.
17. Write and issue combat orders.
18. Control the fire and maneuver of his assigned section.
19. Locate, close with, and destroy the enemy by fire and maneuver.
20. Repel the enemy assault by fire and close combat.
21. Capable of performing operator maintenance for, and is proficient in employment of, all optics assigned to the rifle platoon.
22. Proficient in proper combat reporting procedures.
23. Capable of zeroing a laser aiming device, target point illuminator, and Day/Night Sights (DNS).
24. Request close air support.
25. Integrate supporting fires in accomplishment of an assigned mission.
26. Proficient in HLZ procedures.

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BILLET: Section Leader, 60mm Mortar Section, Weapons Platoon

The 60mm Mortar Section Leader carries out the orders of the Weapons Platoon Commander. He is responsible for the discipline, appearance, training, control, conduct, and welfare of his section at all times, as well as the condition, care, and economical use of its weapons and equipment. In combat, he is also responsible for the tactical employment, fire discipline, and fire control of the mortar section. His rank is Staff Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a 60mm Mortar Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his section in the performance of tasks that support platoon and/or company training objectives.
5. Assist the commander in conducting operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned section.
8. Direct casualty collection and evacuation for his assigned section.
9. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned section.
11. Coordinate and supervises the embarkation and debarkation of his assigned section.
12. Perform operator maintenance for and demonstrates proficiency with the service rifle/carbine and service pistol.
13. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
14. Emplace and recover an M18A1 Claymore mine.
15. Probe for and marks a mine.
16. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
17. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
18. Perform self-aid and buddy aid.
19. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
20. Communicate using proper communications procedures with organic wired and wireless communications.
21. Call for and adjust indirect fire.
22. Write and issue combat orders.
23. Assist the commander in controlling the fire and maneuver of his assigned section.
24. Locate, close with, and destroy the enemy by fire and maneuver.
25. Repel the enemy assault by fire and close combat.

BILLET: Section Leader, 81mm Mortar Platoon

The 81mm Mortar Section Leader is responsible for the tactical employment of the 81mm mortar squads and carries out the orders of the Platoon Sergeant and Platoon Commander. He is capable of performing all the tasks required of an infantry unit leader and assumes the position of the Platoon Sergeant in his absence. He advises the Platoon Sergeant on the discipline, appearance,

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control, conduct, and welfare of the squads. In addition to supervising the emplacement, laying, and firing of the mortars, he assists the Platoon Commander's set-up and operations of the Fire Direction Center (FDC). He coordinates and supervises the embarkation/debarkation, maintenance, condition, and care of the section's weapons and equipment including accountability, communication equipment, and if applicable, maintenance, and upkeep of the sections assigned vehicles. His rank is Staff Sergeant and his T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of an 81mm Mortar Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his section in the performance of tasks that support platoon, company, and battalion training objectives.
5. Assist the commander in conducting operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned section.
8. Direct casualty collection and evacuation for his assigned section.
9. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned section.
11. Coordinate and supervises the embarkation and debarkation of his assigned section.
12. Perform operator maintenance for and is proficient with the service rifle/carbine and service pistol.
13. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
14. Emplace and recovers an M18A1 Claymore mine.
15. Detect and mark a mine.
16. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
17. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
18. Perform self-aid and buddy aid.
19. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
20. Communicate using proper communications procedures with organic wired and wireless communications.
21. Call for and adjust indirect fire.
22. Write and issue combat orders.
23. Assist the commander in controlling the fire and maneuver of his assigned section.
24. Locate, close with, and destroy the enemy by fire and maneuver.
25. Repel the enemy assault by fire and close combat.

BILLET: Section Leader, Javelin Section, Anti-Armor Platoon

The Javelin Section Leader carries out the orders of the Platoon Commander or unit leader. He is responsible for the discipline, appearance, training, control, conduct, and welfare of his section at all times, as well as the condition, care, and economical use of its weapons and equipment. He trains his section in ground anti-armor tactics. In combat, he is also responsible

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for the tactical employment, fire discipline, fire control, and is responsible for the effective employment of the Javelin squads as attachments to other units. His rank is Staff Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a Javelin Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his section in the performance of tasks that support platoon and/or company training objectives.
5. Assist the commander in conducting operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned section.
8. Direct casualty collection and evacuation for his assigned section.
9. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned section.
11. Coordinate and supervises the embarkation and debarkation of his assigned section.
12. Perform operator maintenance for and are a proficient marksman with an M16/M4 series service rifle/carbine and M9 pistol.
13. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
14. Emplace and recover an M18A1 Claymore mine.
15. Detect and mark a mine.
16. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
17. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
18. Perform self-aid and buddy aid.
19. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
20. Communicate using proper communications procedures with organic wired and wireless communications.
21. Call for and adjust indirect fire.
22. Write and issue combat orders.
23. Assist the commander in controlling the fire and maneuver of his assigned section.
24. Locate, close with, and destroy the enemy by fire and maneuver.
25. Repel the enemy assault by fire and close combat.

BILLET: Section Leader, TOW Section, Anti-Armor Platoon

The Section Leader, Anti-Armor Platoon, carries out the orders of the Anti-armor Platoon Commander. He trains his platoon in both vehicle and ground anti-armor tactics. He maintains the discipline, appearance, control, and welfare of the Anti-Armor platoon. He trains his antitank platoon in the performance of tasks that support platoon/company/battalion training objectives. He maintains the condition, care, and economical use of assigned weapons, vehicles, and equipment. He is capable of performing all of the tasks required of a Driver, Assistant Gunner, and Gunner. He identifies

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armored vehicles. His rank is Staff Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of an Antitank (TOW/SABER) Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his section in the performance of tasks that support platoon and/or company training objectives.
5. Assist the commander in conducting operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned section.
8. Direct casualty collection and evacuation for his assigned section.
9. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned section.
11. Coordinate and supervise the embarkation and debarkation of his assigned section.
12. Perform operator maintenance for and is proficient with the service rifle/carbine and service pistol.
13. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
14. Emplace and recover an M18A1 Claymore mine.
15. Detect and mark a mine.
16. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
17. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
18. Perform self-aid and buddy aid.
19. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
20. Communicate using proper communications procedures with organic wired and wireless communications.
21. Call for and adjust indirect fire.
22. Write and issue combat orders.
23. Assist the commander in controlling the fire and maneuver of his assigned section.
24. Locate, close with, and destroy the enemy by fire and maneuver.
25. Repel the enemy assault by fire and close combat.

BILLET: Platoon Sergeant, Rifle Platoon

The Platoon Sergeant, Infantry Platoon carries out the orders of the Platoon Commander and Company Commander. He is capable of performing all the tasks required of an infantry unit leader and assumes the position of the Platoon Commander in his absence. He advises the Platoon Commander on the discipline, appearance, control, conduct, and welfare of the platoon. He assists the Platoon Commander in training of the platoon in performance of tasks which support assigned training objectives. He coordinates and supervises the embarkation/debarkation, maintenance, condition, and care of the platoons weapons and equipment including accountability, communication equipment, and if applicable, maintenance, and upkeep of the platoon's assigned vehicles. He advises the Platoon Commander and works with the

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Company First Sergeant on all administrative matters pertaining to the Marines in the platoon. His rank is Staff Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a Rifle Platoon Sergeant.
3. Serve as the second-in-command of a rifle platoon.
4. Train his platoon in the performance of tasks that support platoon and/or company training objectives.
5. Advise the commander on the discipline, appearance, control, conduct, and welfare of his platoon.
6. Assist the commander in conducting operational risk management.
7. Inspect the condition, care, and economical use of assigned weapons and equipment.
8. Proficient in the employment of the weapon systems organic to his assigned platoon.
9. Direct casualty collection and evacuation for his assigned platoon.
10. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
11. Direct the supply and re-supply of his assigned platoon.
12. Coordinate and supervise the embarkation and debarkation of his assigned platoon.
13. Perform operator maintenance for and are a proficient marksman with the service rifle/carbine and M9 pistol.
14. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
15. Emplace and recover an M18A1 Claymore mine.
16. Detect and mark a mine.
17. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
18. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
19. Perform self-aid and buddy aid.
20. Performs individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
21. Communicate using proper communications procedures with organic wired and wireless communications.
22. Call for and adjust indirect fire.
23. Write and issue combat orders.
24. Assist the commander in controlling the fire and maneuver of his assigned platoon.
25. Locate, close with, and destroy the enemy by fire and maneuver.
26. Repel the enemy assault by fire and close combat.

BILLET: Platoon Sergeant, Weapons Platoon

The Platoon Sergeant, Weapons Platoon carries out the orders of the Platoon Commander and Company Commander. He is capable of performing all the tasks required of an infantry unit leader and assumes the position of the Platoon Commander in his absence. He advises the Platoon Commander on the discipline, appearance, control, conduct, and welfare of the platoon. He assists the Platoon Commander in training of the platoon in performance of tasks which support assigned training objectives. He coordinates and supervises the embarkation/debarkation, maintenance, condition, and care of the platoons weapons and equipment including accountability, communication

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equipment, and if applicable, maintenance and upkeep of the platoons assigned vehicles. He is also part of the companies Fire Direction Center (FDC) for the 60mm Mortar Section. He advises the Platoon Commander and works with the Company First Sergeant on all administrative matters pertaining to the Marines in the platoon. His rank is Gunnery Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a weapons Platoon Sergeant.
3. Serve as the second-in-command of a weapons platoon.
4. Train his platoon in the performance of tasks that support platoon and/or company training objectives.
5. Advise the commander on the discipline, appearance, control, conduct, and welfare of his platoon.
6. Assist the commander in conducting operational risk management.
7. Inspect the condition, care, and economical use of assigned weapons and equipment.
8. Proficient in the employment of the weapon systems organic to his assigned platoon.
9. Direct casualty collection and evacuation for his assigned platoon.
10. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
11. Direct the supply and re-supply of his assigned platoon.
12. Coordinate and supervise the embarkation and debarkation of his assigned platoon.
13. Perform operator maintenance for, and are a proficient marksman with the service rifle/carbine and M9 pistol.
14. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
15. Emplace and recover an M18A1 Claymore mine.
16. Detect and mark a mine.
17. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
18. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
19. Perform self-aid and buddy aid.
20. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
21. Communicate using proper communications procedures with organic wired and wireless communications.
22. Call for and adjust indirect fire.
23. Write and issue combat orders.
24. Assist the commander in controlling the fire and maneuver of his assigned platoon.
25. Locate, close with, and destroy the enemy by fire and maneuver.
26. Repel the enemy assault by fire and close combat.

BILLET: Platoon Sergeant, Heavy Machinegun Platoon

The Platoon Sergeant, Heavy Machinegun Platoon carries out the orders of the Platoon Commander or unit commander. He is responsible for the discipline, appearance, training, control, conduct, and welfare of his platoon at all times, as well as the condition, care, and economical use of its weapons, vehicles, and equipment. In combat, he is also responsible for the tactical employment, fire discipline, fire control, and effective employment/

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attachment of the machinegun squads as attachments to other units, ground or vehicle mounted. His rank is Gunnery Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of a Heavy Machinegun Platoon Sergeant.
3. Serve as the second-in-command of a Heavy Machinegun Platoon.
4. Train his platoon in the performance of tasks that support platoon and/or company training objectives.
5. Advise the commander on the discipline, appearance, control, conduct, and welfare of his platoon.
6. Assist the commander in conducting operational risk management.
7. Inspect the condition, care, and economical use of assigned weapons and equipment.
8. Proficient in the employment of the weapon systems organic to his assigned platoon.
9. Direct casualty collection and evacuation for his assigned platoon.
10. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
11. Direct the supply and re-supply of his assigned platoon.
12. Coordinate and supervise the embarkation and debarkation of his assigned platoon.
13. Perform operator maintenance for, and is proficient with the service rifle/carbine and service pistol.
14. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
15. Emplace and recover an M18A1 Claymore mine.
16. Detect and mark a mine.
17. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
18. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
19. Perform self-aid and buddy aid.
20. Perform individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
21. Communicate using proper communications procedures with organic wired and wireless communications.
22. Call for and adjust indirect fire.
23. Write and issue combat orders.
24. Assist the commander in controlling the fire and maneuver of his assigned platoon.
25. Locate, close with, and destroy the enemy by fire and maneuver.
26. Repel the enemy assault by fire and close combat.

BILLET: Platoon Sergeant, Anti-armor Platoon

The Platoon Sergeant, Anti-armor Platoon carries out the orders of the Antiarmor Platoon Commander/unit leader. He performs the tasks required of a leader in the Antitank (TOW/SABER and Javelin) Platoon and thoroughly trains his platoon in both vehicle and ground anti-armor tactics and demolitions. He maintains the discipline, appearance, control, and welfare of the Anti-armor Platoon. His rank is Gunnery Sergeant. His T/O weapon is the service rifle/carbine.

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Core Capabilities:

1. Carry out the orders of the Platoon Commander.
2. Perform the tasks required of an Antitank (TOW/SABER and Javelin) Section Leader.
3. Advise the commander on the discipline, appearance, control, conduct, and welfare of his section.
4. Train his platoon in the performance of tasks that support platoon and/or company training objectives.
5. Assist the commander in conducting operational risk management.
6. Inspect the condition, care, and economical use of assigned weapons and equipment.
7. Proficient in the employment of the weapon systems organic to his assigned platoon.
8. Direct casualty collection and evacuation for his assigned platoon.
9. Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission.
10. Direct the supply and re-supply of his assigned platoon.
11. Coordinate and supervise the embarkation and debarkation of his assigned platoon.
12. Perform operator maintenance for and is proficient with the service rifle/carbine and service pistol.
13. Engage targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade.
14. Emplace and recover an M18A1 Claymore mine.
15. Detect and mark a mine.
16. Utilize smoke grenades and pyrotechnics for signaling, illumination, and screening.
17. Determine current location and traverses designated points using a topographic map, lensatic compass, and protractor.
18. Perform self-aid and buddy aid.
19. Performs individual protective measures to counteract the effects of nuclear, biological, and chemical contamination.
20. Communicate using proper communications procedures with organic wired and wireless communications.
21. Call for and adjust indirect fire.
22. Write and issue combat orders.
23. Assist the commander in controlling the fire and maneuver of his assigned platoon.
24. Locate, close with, and destroy the enemy by fire and maneuver.
25. Repel the enemy assault by fire and close combat.

BILLET: Company Gunnery Sergeant, Rifle Company

Carry out the orders of the rifle company commander. He advises the company commander on the discipline, appearance, control, conduct, and welfare of the company. He serves as the senior enlisted technical and tactical advisor to the company commander. He coordinates and supervises the embarkation/debarkation for deployment of the company, maintenance, condition, and care of the companies weapons and equipment including accountability, communication equipment, and if applicable, maintenance and upkeep of assigned vehicles. His rank is Gunnery Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the company commander.
2. Serve as the senior enlisted technical and tactical advisor to the

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company commander.

3. Serve as the senior enlisted technical and tactical advisor for platoon commanders and platoon sergeant in company.
4. Coordinate training, operational, and logistical support requirements for the company.
5. Assist the commander in conducting operation risk management.
6. Direct the supply and re-supply of his assigned company.
7. Perform the tasks required of a company gunnery sergeant.
8. Capable of performing all the tasks required of an infantry unit leader.

BILLET: Operations Chief, Weapons Company

The infantry operations chief carries out the orders of the weapon company commander or the battalion operations officer. He is capable of performing all the tasks required of an infantry unit leader. He performs the tasks required of the operations chief in the weapons company. The weapons company operations chief serves as the senior enlisted technical and tactical advisor to the weapons company commander. He advises the weapons company commander on the discipline, appearance, control, conduct, and welfare of the company. He trains the weapons company in the performance of tasks which support assigned training objectives. He advises the weapons company commander on the condition, care, and economical use of company weapons and equipment. He coordinates and supervises the embarkation and debarkation for deployment of Weapons Company. Weapons company operations chief supervises the actions of personnel within the fire support coordination center. His rank is Master Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Carry out the orders of the company commander.
2. Serve as the senior enlisted technical and tactical advisor to the weapons company commander.
3. Serve as the senior enlisted technical and tactical advisor for platoon commanders and platoon sergeant in Weapons Company.
4. Supervise and assist in the actions within the fire support coordination center (FSC).
5. Coordinate and supervise the embarkation and debarkation for deployment of weapons company.
6. Perform the tasks required of the operations chief in the weapons company.
7. Capable of performing all the tasks required of an infantry unit leader.
8. Coordinate training, operational and logistical support requirements for the weapons company.

BILLET: Operations Chief, S-3 Section, Infantry Battalion/Regiment

The infantry operations chief also performs the tasks required of an operations chief for the infantry battalion. He may serve as an operations chief in an infantry regiment, division, Marine Expeditionary Unit, Marine Expeditionary Brigade, Marine Expeditionary Force and Special Purpose MAGTF. He may serve as the senior enlisted advisor to the battalion operations officer. He advises the battalion operations officer on the discipline, appearance, control, conduct, and welfare of the battalion operations section. He trains his operation section in the performance of tasks which support assigned training objectives. He advises the battalion operations officer on the condition, care, and economical use of assigned weapons and equipment. He coordinates and supervises the embarkation and debarkation of the battalion operations section. He coordinates and supervises the set-up

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and displacement of the combat operations center. He supervises the actions of all enlisted personnel within the combat operations center. He maintains good order and discipline within the combat operations center. He manages the flow of information within the combat operations center. He supervises the input of data into the combat operations center journal. He assists the operations officer in the training of watch officers. He compiles the components of an operations order for distribution to subordinate units. He supervises the timely submission of messages and reports. He assists in the preparation of military briefs in support of the operations section. He maintains the operations section's publication library. He assists the operations officer with the development of the unit's training plan. He assists with the collection, review, and distribution of training schedules and letters of instruction in support of the unit's training plan. His rank is Master Gunnery Sergeant. His T/O weapon is the service rifle/carbine.

Core Capabilities:

1. Serve as the senior enlisted tactical and technical advisor to the commander and operations officers.
 2. Assist the commander and operations officers on the discipline, appearance, training, control, conduct, and welfare of the S-3 section.
 3. Advise the commander and operations officers on the condition, maintenance and economical use of the operations section's equipment.
 4. Coordinate and supervise the embarkation and debarkation of the operations section.
 5. Coordinate and supervise the set-up and displacement of the Unit Operations Center as well as other functional areas as directed.
 6. Supervise the actions of all personnel within the COC.
 7. Supervise and controls section's CMR and funding.
 8. Supervise the use of Automated Data Processing (ADP) equipment and software within the operations section.
 9. Manage the flow of information provided through available C4I systems.
 10. Supervise the control, dissemination and destruction of classified information within the operations section.
 12. Supervise preparation of the operational journal and journal file.
 13. Establish the watch bill for the Command Operations Center.
 14. Assemble and distribute operations orders.
 15. Supervise the preparation and submission of messages and reports.
 16. Supervise the preparation of military information briefs in support of the operations section.
 17. Supervise the maintenance of the operations sections war fighting and training publication library.
 18. Maintain the unit's training records.
 19. Assist the operations officer with the development of the unit's training plan.
 20. Prepare training schedules and letters of instruction.
 21. Supervise the request of ranges and training areas.
 22. Assist the commander in the tactical employment of the organic weapons systems for the unit.
 23. Assist the commander in ensuring the establishment of a perimeter defense, security/observation posts, or a Force Protection posture.
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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,)	
)	
Plaintiff,)	
)	
v.)	No. 21-1970C
)	(Senior Judge Loren A. Smith)
THE UNITED STATES,)	
)	
Defendant.)	

JOINT MOTION FOR A VOLUNTARY REMAND AND FOR A STAY OF COURT PROCEEDINGS PENDING THE REMAND RESULTS

Pursuant to Rule 52.2(a) of the Rules of the United States Court of Federal Claims (RCFC), plaintiff, William Olas Bee, and defendant, the United States, respectfully request that the Court remand this matter to the Secretary of the Navy. Specifically, we request that the Court: (1) remand the matter with the instruction that the Board for Correction of Naval Records (BCNR or board) consider the claims asserted by Mr. Bee, including specific items as detailed below; (2) stay this action pending the resolution of the remand proceeding; (3) require defendant to provide a status report every 90 days following any remand order; (4) and instruct the board to provide copies to the Court and the parties pursuant to the Court’s rules.

BACKGROUND

In April 2013, Mr. Bee was honorably discharged from the United States Marine Corps. Mr. Bee alleges he was unfit for further service at the time of his discharge and should have been medically retired rather than discharged. Accordingly, in April 2018, Mr. Bee submitted an application to the board requesting correction of his naval record to reflect a medical retirement for, *inter alia*, traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). Upon discharge, the Department of Veterans Affairs (VA) determined each disability was incurred

while on active duty and each was rated as 70% disabling; Mr. Bee is rated cumulatively as 100% disabled. The board denied Mr. Bee's application on August 5, 2019.

Mr. Bee commenced this action on October 6, 2021, alleging that the determination of the board and the Secretary of the Navy was arbitrary and capricious, unsupported by substantial evidence, and contrary to law. Dkt. No. 1, Compl. Both parties submitted motions for judgment on the administrative record, Dkt. Nos. 20, 23, and the Court held oral argument on July 25, 2022. At argument, the Court directed the parties to meet and confer regarding a possible settlement. The parties have done so and have agreed to submit this motion, jointly recommending to the Court that it remand the matter to the BCNR under the following instructions.

ARGUMENT

I. Legal Standards

The Tucker Act allows this Court “to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just.” 28 U.S.C. § 1491(a)(2). The Supreme Court has held that “remand to [an] agency for additional investigation and explanation” is appropriate when “the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it.” *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985).

An agency may request a remand simply to “reconsider its previous position” without admitting error. *SKF USA Inc. v. United States*, 254 F.3d 1022, 1028-29 (Fed. Cir. 2011). Although the agency's request for a voluntary remand “may be refused if [it] is frivolous or in bad faith,” a court can and should remand if the agency has “substantial and legitimate” concern about its decision. *See id.* at 1029.

Once the Court determines that a remand is appropriate, the Court then issues an order pursuant to RCFC 52.2. Rule 52.2(a) provides that “[i]n any case within its jurisdiction, the court, on motion or on its own, may order the remand of appropriate matters to an administrative or executive body or official.”

II. Remand Is “Proper And Just”

Without conceding error, the Government seeks a remand so the BCNR may reconsider its decision. This remand is proper and just for at least the following reasons.

First, the Government has “substantial and legitimate” reasons for requesting remand. *SKF USA Inc.*, 254 F.3d at 1029. Mr. Bee has raised concerns that the BCNR did not properly address whether he was unfit to perform the duties of his office, grade, rank, or rating due to his combat-incurred medical conditions, specifically alleging that he was performing outside his U.S. Marine Corps Military Occupational Specialty (MOS) at the time of his separation because he was unable to perform the duties of his infantry MOS. Remanding this matter would allow the BCNR to more fully consider and address the issues raised, the relevant medical and record evidence presented, and the rebuttals offered by Mr. Bee. *See Keltner v. United States*, No. 19-663C, 2020 WL 2957175, at *11 (Fed. Cl. June 3, 2020) (“[W]here an agency requests a remand without confessing error, the agency must express some intent to reconsider the original agency decision that is the subject of the legal challenge, after which the court has discretion to grant or deny the motion.”).

Second, the Court may remand a matter to direct an agency to take actions that will ensure a meaningful judicial review. As the Supreme Court has explained: “The agency can bring its expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination; and, in doing so, it can, through informed discussion and analysis, help a court

later determine whether its decision exceeds the leeway that the law provides.” *I.N.S. v. Orlando Ventura*, 537 U.S. 12, 17 (2002). Once given an opportunity to review and adequately address Mr. Bee’s concerns, the BCNR’s decision will be ready for judicial review, if necessary. Notably, this Court is not empowered to consider evidence not in the record. *E.g., Bateson v. United States*, 48 Fed. Cl. 162, 164 (2000), *aff’d*, 64 F. Appx. 244 (Fed. Cir 2003). Here, as we propose, the BCNR would not only review the existing record, it would elicit and consider any new arguments and evidence Mr. Bee may wish to present regarding existing claims. Thus, if following remand, further proceedings are warranted, the Court would have the benefit of a consolidated record compliant with applicable regulations and arguments made.

Third, a remand serves the Court’s – and the parties’ – interest in resolving this matter in a just, speedy, and inexpensive manner. *See* RCFC 1. Indeed, during the remand, Mr. Bee may receive all of the relief he seeks in this lawsuit with no further judicial proceedings. Specifically, the board is empowered to correct any military record, *Roth v. United States*, 378 F.3d 1371, 1382 (Fed. Cir. 2004), and pursuant to 10 U.S.C. § 1552(c)(1), the Secretary may pay a claim for allowances that stems from a record correction. *See Wolfing v. United States*, 144 Fed. Cl. 516, 522 (2019) (granting a motion for remand in order “to afford the ABCMR an opportunity to grant plaintiffs the relief they are seeking”).

Fourth, unlike this Court, the board is empowered “to correct an error or remove an injustice.” 10 U.S.C. § 1552(a). Accordingly, the correction board will consider the equities of Mr. Bee’s situation, along with his legal rights. Thus, even if the board were to ultimately disagree that Mr. Bee is legally entitled to the relief he seeks, it may determine nonetheless that, given the circumstances his claim presents, relief is necessary to “remove an injustice.”

Fifth, even if a remand does not result in full relief, Mr. Bee could return to Court to seek

the balance of any claims not granted, and press not only the arguments presently before this Court but any others he might have presented to the board.

III. Remand Instructions

Once the Court determines that a remand is appropriate, the Court then issues an order pursuant to Rule 52.2. Rule 52.2(a) provides that “[i]n any case within its jurisdiction, the court, on motion or on its own, may order the remand of appropriate matters to an administrative or executive body or official.” Rule 52.2(b)(1)(A) requires remand orders to contain directions that the Court deems “proper and just.”

Here, we propose that the Court stay further proceedings in this action pending the completion of the remand, and order and instruct that on remand the BCNR shall:

1. Reconsider its August 5, 2019, decision regarding Mr. Bee’s application for correction of his military record, including all claims asserted, including without limitation any claims for permanent disability retired pay pursuant to 10 U.S.C. § 1201 or temporary disability retired pay pursuant to 10 U.S.C. § 1202, and, as a result of that reconsideration, correct any errors in or remove any injustices from Mr. Bee’s record, as appropriate;
2. Afford Mr. Bee the opportunity to submit any additional claims, evidence, and arguments to the board within 60 days of the date of the order remanding his case to the board;
3. Consider requesting new advisory opinions addressing the issues set forth in this joint motion, including whether Mr. Bee was unfit to perform the duties of his office, grade, rank, or rating; and if the advisory opinion is unfavorable to Mr. Bee, provide Mr. Bee an opportunity to comment upon the new opinions;
4. Considering all relevant evidence, apply the relevant criteria for assessing a service member’s fitness, as set forth in Secretary of the Navy Instruction (SECNAVINST) 1850.4E and Department of Defense Instruction (DoDI) 1332.38 § E3.P3.2.1; *see* 10 U.S.C. § 1201(a), and providing a reasoned explanation for its determination, determine whether Mr. Bee

was unfit to perform the duties of his office, grade, rank, or rating;

5. Complete its review and issue a decision regarding Plaintiff's claims within seven months from the date of the Court's remand order; and
6. Promptly forward two copies to the Clerk of the Court as provided by RCFC 52.2(d).

We propose that the Court order and instruct the parties as follows:

1. Defendant shall file status reports concerning the progress of the remand proceedings every 90 days, starting from the date of the Court's order remanding the case until the BCNR issues a decision; and
2. Direct the parties to file a notice, within 30 days of the BCNR's decision, indicating their respective positions on "(A) whether the [BCNR decision] affords a satisfactory basis for disposition of the case; or (B) whether further proceedings before the court are required and, if so, the nature of such proceedings," *see* RCFC 52.2(e)(1).

CONCLUSION

For these reasons, the parties respectfully request that the Court grant this motion, remand this matter to the BCNR, and stay all deadlines in this action pending the conclusion of the remand proceedings and further order of the Court.

/s/ Darryl H. Steensma
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**IN THE UNITED STATES
COURT OF FEDERAL CLAIMS**

WILLIAM OLAS BEE

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 1:21-cv-01970-LAS

AMENDED COMPLAINT

1. Plaintiff William Olas Bee (“Plaintiff”), a Purple Heart recipient and honorably discharged Marine Corps staff sergeant, brings this action against the U.S. Department of the Navy (“Navy”) after the Board for Correction of Naval Records (the “Board” or “BCNR”) unlawfully found, for a second time, that Plaintiff had not shown error or injustice in the Navy’s failure to refer Plaintiff into the Disability Evaluation System (“DES”) and, ultimately, medically retire him for his unfitting combat-incurred traumatic brain injury (“TBI”) and post-traumatic stress disorder (“PTSD”). This decision wrongfully deprives Plaintiff of the status and benefits associated with medical retirement. The Board’s decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law because it fails to comply with Department of Defense Instruction 1332.38, misapplies the presumption of regularity, rejects the authority of binding regulations, and ignores crucial, substantial evidence of the severity of Plaintiff’s debilitating injuries.

INTRODUCTION

2. Plaintiff was honorably discharged from the Marine Corps after 13 years of service, including four combat deployments. However, at the time of his discharge, Plaintiff’s combat-

incurred PTSD and TBI, and related symptoms, rendered him unfit for service in his office, grade, rank, or rating, so Plaintiff should have been referred to the DES and, ultimately, medically retired for unfitting conditions that were at least 30% disabling. In an effort to correct this injustice, Plaintiff submitted an application for correction of his naval record to the Board on April 25, 2018, requesting that his naval record be corrected to reflect the medical retirement that he should have received.

3. The Board denied Plaintiff the requested correction on August 5, 2019. This suit followed when Plaintiff filed his Complaint, ECF No. 1 (hereinafter “Original Complaint”), on October 6, 2021, requesting review of the Board’s decision because it was arbitrary, capricious, unsupported by substantial evidence, and contrary to law.¹ On September 21, 2022, following motions for judgment on the administrative record and responses by both parties and oral argument, this Court granted a joint motion to remand Plaintiff’s application to the Board for reconsideration. The Court ordered that the Board reconsider the application, along with “any additional claims, evidence, and arguments” submitted to the Board. ECF No. 36 at 5 (order granting Joint Motion for a Voluntary Remand). In his second application for correction of his Naval record, Plaintiff again established that, at the time of his separation from active duty, he was unfit for service in his office, grade, rank, or rating because of physical disabilities incurred while entitled to basic pay that were at least 30% disabling, and he was therefore entitled to disability retirement. *See* 10 U.S.C. § 1201(a).

4. Plaintiff’s primary role in the Marine Corps at the time of his separation was Infantry Unit Leader, MOS 0369. As an infantry Marine, his job was combat. “Infantry Marines,”

¹ Plaintiff hereby incorporates by reference the entirety of the Original Complaint, including all factual allegations, as if fully set forth herein.

including Infantry Unit Leaders, must be “combat leader[s]” who “locate, close with and destroy the enemy by fire and maneuver” and must be “able to secure and defend [themselves] and vital terrain.” Marine Corps Order 1200.17, Military Occupational Specialties (MOS) Marine Corps Manual (“MOS Manual”) § 3110, ¶ 1. As an Infantry Unit Leader, Plaintiff needed to be able to react quickly to dynamic circumstances while enduring the intense stress of a combat situation, to efficiently lead the Marines entrusted to his command, and to coordinate the movement and fire of tactical units.

5. Unfortunately, as Plaintiff explained to the Board, Plaintiff was not fit to perform this role at the time of his discharge as a result of combat-incurred disabilities. Based on medical examinations while still on active duty, Plaintiff was rated by the Department of Veterans Affairs (“VA”) as 70% disabled due to a traumatic brain injury (“TBI”) and, separately, as 70% disabled due to post-traumatic stress disorder (“PTSD”), which were caused by an improvised explosive device that nearly ended Plaintiff’s life while he was on active duty in Afghanistan.

6. Plaintiff presented medical evidence to the Board that, at the time of his discharge, his TBI caused cognitive function deficits, including in the areas of memory, concentration, and planning, and that such deficits are incompatible with the duties of his rating as an Infantry Unit Leader, which required him to lead infantry Marines in combat. Plaintiff’s TBI caused spatial disorientation so severe that he had difficulty navigating between work and home, yet his rating required him to navigate extensively in unfamiliar terrain using a variety of methods and to be able to coordinate spatially complex tasks, such as airstrikes and artillery bombardments.²

² Plaintiff suffers from these disabilities and many of these symptoms to this day. The past tense is used here to describe Plaintiff’s condition when he was discharged, which is the timeframe relevant to this case; the use of the past tense should not be understood to imply that Plaintiff’s condition has been resolved or that he no longer experiences the symptoms described herein.

7. Plaintiff also presented medical evidence to the Board that his PTSD was similarly incompatible with his required duties as an Infantry Unit Leader. Plaintiff suffered panic disorder with agoraphobia that caused acute, debilitating anxiety episodes and, according to his examining physician, “m[ade] it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone.” AR 58. An expeditionary role in combat operations was not within Plaintiff’s “narrowed comfort zone,” nor was it even plausible that Plaintiff would be able to react quickly to lead the Marines under his command, coordinate the movement and fire of tactical units, or otherwise operate as an Infantry Unit Leader while debilitated by PTSD-induced anxiety.

8. In short, Plaintiff demonstrated that, at the time of his discharge, he was unfit to perform the duties of his office, grade, rank, or rating. Nonetheless, on May 8, 2023, the Board once again denied Plaintiff’s application to correct his military record to reflect medical retirement.

9. In its second evaluation of Plaintiff’s application, the Board again made numerous critical errors. The Board failed to consider Plaintiff’s disability rating from the VA. Indeed, if one read only the Board’s letter, one would have no idea that at the time of his discharge Plaintiff was 70% disabled due to his TBI and, independently, 70% disabled due to PTSD; the Board makes no mention of these disabilities ratings, nor does the Board make any meaningful effort to reconcile such indicia of severe disability with its conclusion that Plaintiff was fully fit to perform the duties of his office, grade, rank, or rating at the time of his discharge. VA disability ratings are relevant evidence that must be considered in determining unfitness for duty, *Valles-Prieto v. United States*, 159 Fed. Cl. 611, 618 (Fed. Cl. 2022) (citing *Heisig v. United States*, 719 F.2d 1153, 1157 (Fed. Cl. 1983)), yet the Board brushed these ratings aside as mere “service-connection determinations [] unrelated to fitness determinations,” Board Decision, Ex. A at 2.

10. The Board acknowledged that this Court remanded this case and ordered the Board to apply the relevant criteria for assessing a service member's fitness, as set forth in Secretary of the Navy Instruction ("SECNAVINST") 1850.4E and Department of Defense Instruction ("DoDI") 1332.38, to determine whether Plaintiff was unfit to perform the duties of his office, grade, rank, or rating. The Board nevertheless averred that it need not follow the guidance of DoDI 1332.38 or SECNAVINST 1850.4E. The Board argued that this Court's guidance in *Nyan v. United States*, 153 Fed. Cl. 234 (2021) ("Nyan I"), *vacated solely as to remedy*, 154 Fed. Cl. 463 ("Nyan II"), did not apply to the Board, but, instead, to a Physical Evaluation Board ("PEB"). *But see Nyan II*, 154 Fed. Cl. at 467–68 (remanding "to the **BCNR** pursuant to RCFC 52.2 for it to determine, consistent with this Court's April 5 Opinion [153 Fed. Cl. 234] and the instructions herein, whether any or all of Mr. Nyan's three medical conditions . . . rendered him unfit for military service") (emphasis added). Throughout its decision, the Board erroneously disclaimed reliance upon or any obligation to adhere to controlling law and military regulations. This error infected the Board's analysis throughout, and lead to legally erroneous conclusions.

11. The Board again failed to evaluate the duties reasonably to be expected of Plaintiff's office, grade, rank, or rating. Once again, the Board focused on Fitness Reports ("FITREPs") from Plaintiff's out-of-MOS billet at Field Medical Training Battalion – East ("FMTB-E"); as a result, the Board answered the wrong question. *Nyan I*, 153 Fed. Cl. at 243 ("[T]he question is not whether Mr. Nyan was disabled from performing any and all work that a Hospital Corpsman might be assigned to perform, but rather whether he was disabled from performing work that a Hospital Corpsman at the E4 grade could 'reasonably be expected to perform.'" (citing SECNAVINST 1850.4E encl. 3, § 3301)).

12. Rather than considering what duties an Infantry Unit Leader like Plaintiff could reasonably be expected to perform, the Board relied on Plaintiff's apparently adequate performance at FMTB-E training Navy chaplains and medical personnel, and limited its analysis of his rate to speculation about what an Infantry Unit Leader might experience if they only had to serve *in a garrison environment*. There is no justification for limiting its analysis to such an environment or for excluding the operational duties required of infantry Marines that were thoroughly conveyed by Plaintiff's submission to the Board and Plaintiff's own service record.

13. The Board failed to apply liberal consideration to Plaintiff's case, despite both a regulatory and statutory requirement that it do so. *See Doyon v. United States*, 58 F.4th 1235, 1238 (Fed. Cir. 2023); Anthony Kurta, Memorandum for Secretaries of the Military Departments, Clarifying Guidance to Military Discharge Review 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 (Aug. 25, 2017) (hereinafter, the "Kurta Memo"); 10 U.S.C. § 1552(h) (statutorily codifying the "liberal consideration" standard). The liberal consideration standard required the Board to liberally consider Plaintiff's statements that his removal from infantry duties and his separation through the Voluntary Separation Program were evidence of his unfitness. *See Valles-Prieto v. United States*, 159 Fed. Cl. at 617–18 (finding AFBCMR decision arbitrary, capricious, and contrary to law because it ignored relevant evidence in the form of plaintiff's statements regarding his unfitness for duty, noting that, under DoD guidance to Boards for Correction of Military/Naval Records, "the plaintiff's 'testimony *alone*, oral or written, may establish the existence of a fact supportive of relief'") (internal citations omitted).

14. The Board misapplied the presumption of regularity, treating the presumption as virtually insurmountable when certain evidence supported the Board's conclusion, and nonexistent when other evidence ran counter to the Board's conclusion. Contrary to the Board's conclusion, in the face of such evidence of irregularity as Plaintiff has provided, the presumption itself is of no force, and it certainly cannot be applied so selectively.

15. In short, the Board appears to have approached Plaintiff's application with a decision already rendered, and bent the evidence, logic, the law, and the presumption of regularity to fit that decision; what couldn't be bent, like Plaintiff's VA disability rating, was ignored entirely.

16. Plaintiff thus brings this action against the United States for his disability retirement pay and benefits, and collaterally for the correction of his military records regarding the appropriate basis for his discharge from the Marine Corps. Plaintiff respectfully requests that this Court order the Board to correct his naval record to reflect a disability retirement.

NATURE OF THE ACTION

17. This is an action under 10 U.S.C. § 1201 for pay and benefits of medical retirement owed to Plaintiff due to his traumatic brain injury and post-traumatic stress disorder sustained while on active duty, as well as a corresponding correction of Plaintiff's naval records regarding the nature of Plaintiff's discharge and injuries at the time of his separation from the Marine Corps.

JURISDICTION

18. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. §§ 1491(a)(1)–(a)(2).

19. The statutory basis for invoking jurisdiction is 10 U.S.C. § 1201, which requires the payment of disability retirement compensation once a disability is found qualifying and, therefore, constitutes a money-mandating provision.

20. Plaintiff exhausted his administrative remedies by, among other things, seeking relief from the Board.

21. Plaintiff has suffered an injury in fact that can be determined in a specific amount.

22. Plaintiff's injury is traceable to the Navy's erroneous and unlawful determination of disability retirement pay and benefits.

23. In accordance with 28 U.S.C. § 2501, this action is brought within six years of the date of Plaintiff's receipt of a final decision from the Board, which was dated March 30, 2023.³

PARTIES

24. Plaintiff is a citizen of the United States and currently resides in North Carolina. Plaintiff served honorably in the Marine Corps for thirteen years.

25. Defendant is the United States of America, acting by and through the Department of Defense and Department of the Navy, both agencies of the United States government. This Amended Complaint may interchangeably refer to the Defendant as the "United States," "the Government," "Defendant," "the Navy," or "the Marine Corps."

FACTUAL ALLEGATIONS

I. PLAINTIFF'S MILITARY HISTORY

A. Plaintiff's Operational Service

26. Plaintiff enlisted in the United States Marine Corps at the age of seventeen and entered active duty service on June 20, 2000. Upon completion of Marine recruit training, Plaintiff

³ The Original Complaint, ECF No. 1, in this action was filed in response to the Board's first decision, which was at that time the "final decision [of] the Board," and was dated August 5, 2019.

received his first Primary Military Occupational Specialty (“PMOS”),⁴ also called his “rating.” Plaintiff’s initial rating was Rifleman, MOS 0311.

27. Plaintiff’s military career began with four years in an operational combat infantry unit, including two deployments to Afghanistan. Plaintiff was first deployed from September 2001 until April 2002, and Plaintiff was subsequently deployed from October 2002 until December 2002. *See* Administrative Record (“AR”) 60.⁵ Plaintiff was awarded the Combat Action Ribbon for service on his initial deployment. *See* AR 304 (Individual Separation Information).

28. In 2004, after his initial combat infantry tour, Plaintiff transferred to a non-deploying role, known in the naval services as a “shore tour,” at a Recruiting Station. There, he was awarded the 8411 (Recruiter) AMOS. *See* AR 193, 306.

29. After three years as a Marine recruiter, Plaintiff returned to a combat infantry unit in 2007 when he began serving in the First Battalion of the Sixth Marine Regiment (“The 1/6”) and deployed a third time to Afghanistan. This third deployment lasted from December 2007 to September 2008. *See* AR 60.

30. On May 18, 2008 Plaintiff sustained a significant head injury. Plaintiff had just completed a four-hour rotation as Sergeant of the Guard and was washing his laundry by hand when he heard a gunshot. Without time to put on any protective body armor or even his helmet, Plaintiff took up his rifle and responded to the threat. When he aimed his rifle over a stone wall,

⁴ There are different types of Military Occupational Specialties (“MOS”), including PMOS, Billet MOS (“BMOS”) and Additional MOS (“AMOS”). A servicemember’s PMOS describes his or her primary role in the armed forces; for Marines, “rating” refers to the PMOS. A billet may require specific skills that result in a servicemember earning a BMOS. An AMOS is an additional role that a servicemember may perform, based on special training and/or demonstrated proficiency, and could be, for example, a prior PMOS (in Plaintiff’s case, when he advanced to Infantry Unit Leader, MOS 0369, he retained an AMOS of Rifleman, 0311), or a BMOS. MOS Manual § 0006.

⁵ References in this Amended Complaint to the Administrative Record refer to the Administrative Record as filed in response to the original Complaint. *See* ECF No. 7.

an enemy sniper's shot struck the wall, dislodging a rock that struck Plaintiff in the head, knocking him unconscious. *See* AR 67. The dramatic scene was captured by a photographer who was embedded with Plaintiff's unit.⁶ As a result of this injury, a January 23, 2009 post-deployment health reassessment diagnosed Plaintiff with a "[p]otential TBI with persistent symptoms." AR 79. The assessment indicated Plaintiff experienced "[m]emory problems," "[b]alance problems or dizziness," "[r]inging in the ears," "[s]ensitivity to bright light," "[i]rritability," "[h]eadaches," and "[s]leep problems." AR 78. The reassessment also noted a minor concern regarding PTSD. AR 80.

31. Plaintiff earned the Navy and Marine Corps Achievement Medal with Combat Distinguishing Device with the Combat V for service in his third deployment. *See* AR 410.

32. Despite his TBI and PTSD symptoms, Plaintiff deployed for his fourth and final time to Afghanistan from December 2009 until June 2010. *See* AR 60. Plaintiff earned a second Navy and Marine Corps Achievement Medal with Combat Distinguishing Device with the Combat V for service in his fourth deployment, *see* AR 414, along with a Purple Heart Medal for injuries sustained in combat. AR 20, 418–19.

33. This fourth deployment was particularly difficult, and Plaintiff suffered extreme stress and trauma during his final tour in Afghanistan. Plaintiff lost a good friend, who died in his arms after being shot in the head; in another incident, Plaintiff fought to medically evacuate another wounded Marine, only for that Marine to die in the MedEvac helicopter en route to safety. AR 61.

34. On June 8, 2010, two days before his fourth deployment was scheduled to end, multiple improvised explosive devices ("IEDs") exploded along the exterior walls of a building

⁶ *See* David K. Li, *Marine pictured in iconic photos of Taliban firefight finally gets Purple Heart*, N.Y. POST, June 8, 2017, <https://nypost.com/2017/06/08/marine-pictured-in-iconic-photos-of-taliban-firefight-finally-gets-purple-heart/>.

that Plaintiff and other members of his squad were using as a forward observation area. The explosions collapsed the building, blew Plaintiff off of his feet, and knocked him unconscious for an extended period of time. His first memory after the blasts was waking up in a CT scanner at Camp Dwyer in Afghanistan. AR 67, 183.

35. Two Marines under Plaintiff's command died instantly, and four other Marines in his squad ended up in the Intensive Care Unit along with Plaintiff. *See* AR 67. Plaintiff's mental anguish was later exacerbated when he learned that the remains of the fallen Marines under his command were initially stored in trash cans, due to lack of any better option in the area. AR 61.

36. Due to the severity of his wounds, Plaintiff was medically evacuated from Afghanistan to Germany. *See* AR 60. Plaintiff was awarded the Purple Heart Medal for the wounds he received in action on June 8, 2010. *See* AR 20, 418–19.

B. Plaintiff's Post-Injury Treatment And Shore Tour

37. On June 16, 2010, before he returned to the United States, Plaintiff was diagnosed with TBI. AR 116. He was referred for physical and occupational therapy, and informed that he would need follow-up appointments with a neurologist stateside to address TBI symptoms, including ataxic gait, short term memory loss, and decreased concentration. *Id.* On June 28, 2010, after he had returned to the United States, Plaintiff was diagnosed with PTSD. *See* AR 68, 178.

38. When he returned to Camp Lejeune, North Carolina, Plaintiff was placed on Limited Duty ("LIMDU") status from June 21, 2010 through December 20, 2010 due to his TBI symptoms. AR 81-81, 173. While on LIMDU, in July and September 2010, Plaintiff saw a clinical neuropsychologist with the Carolina Health Services, Dr. Karen Johnson, who issued a neuropsychological evaluation of Plaintiff on October 4, 2010. Dr. Johnson diagnosed Plaintiff

with cognitive disorder, chronic moderate PTSD, and a Global Assessment of Functioning (“GAF”) score of 40-45.⁷ AR 178.

39. While on LIMDU, Plaintiff was promoted to the rank of Staff Sergeant and the rating of Infantry Unit Leader (MOS 0369), a more advanced rating than Rifleman (MOS 0311). AR 50. However, in October 2010, shortly after the promotion, Plaintiff was assigned to supervise the battalion’s urinalysis testing program. AR 383. In November 2010, Plaintiff was transferred to a shore billet as a “Military Instructor” for Navy medical and religious personnel at the Navy’s FMTB-E in Camp Johnson, North Carolina. *See* AR 385, 387, 392, 397. This billet was a break from the rigors of infantry service, offering Plaintiff an opportunity to apply his military knowledge to training non-combatant medical and religious personnel in the “knowledge, skills, and abilities necessary to serve with and support the Marine Corps.” *Id.* Given the limited, non-operational, and non-combat scope of the billet, Plaintiff did not believe he needed an extension of his LIMDU status, and was taken off LIMDU in December of 2010.⁸ Nevertheless, he would, unfortunately, never be fit to return to operational status or service as an infantry Marine.

40. Plaintiff’s symptoms did not abate, and he continued to suffer from TBI and PTSD throughout his time at FMTB-E. Plaintiff suffered, among other symptoms, disorientation, nausea, and cognitive impairment attributable to his TBI, and was repeatedly treated for—among other

⁷ A GAF score of 40-45 indicates “Serious symptoms (e.g., suicidal ideation, severe obsessional rituals . . .) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” *See* AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 2000) (attached to Original Complaint, ECF 1, as Ex. 16).

⁸ The Board erroneously comments on Plaintiff experiencing “just four months” of LIMDU and being released from LIMDU on Oct. 12, 2010. Board Decision, Ex. A at 9 & n.22. To the contrary, the Oct. 12, 2010 medical record indicates that further follow-up with neurology is necessary and kept Plaintiff on LIMDU until at least Dec. 17, 2010. AR 83; 178–179. Plaintiff spent six months on LIMDU, and was only released from LIMDU following transfer to a non-operational billet.

things—anxiety, depression, chronic fatigue, migraines, and insomnia attributable to PTSD. It was clear he would not be fit or able to return to operational service as an Infantry Marine, so Plaintiff entered the Voluntary Separation Program (“VSP”), which is a force-shaping tool that provides a financial incentive for Marines to leave service early.⁹

41. For Plaintiff, “early” meant only two months; his End of Active Service date was moved up from June 2013 to April 2013, but it was the best option he had, knowing that he was unfit for operational duty and that he therefore had no realistic opportunity to earn promotion, or continue his service as an infantry Marine. VSP spared Plaintiff the indignity of being removed from the Marine Corps involuntarily, which would have been the inevitable alternative under the Marine Corps’ “up-or-out” system that results in a Marine being involuntarily discharged after twice failing to promote. Plaintiff separated from the Marine Corps on April 1, 2013.

C. Plaintiff’s Unfitting TBI And PTSD Symptoms At Discharge

42. In January 2013, while still on active duty, Plaintiff underwent comprehensive TBI and PTSD evaluations. This evaluation resulted in additional diagnoses of subordinate conditions (that is, conditions that were, themselves, the results of Plaintiff’s TBI and PTSD), including post-concussion syndrome / cognitive impairment, primary insomnia, generalized anxiety disorder, panic disorder with agoraphobia, and major depressive disorder. *See* AR 56–74. Based on the January 2013 evaluations, Plaintiff received, in October 2013, a 70% disability rating for TBI, including subordinate diagnoses of post-concussion syndrome and cognitive impairment, and a separate 70% disability rating for PTSD, including subordinate diagnoses of general anxiety disorder, panic disorder with agoraphobia, and major depressive disorder. AR 104–09. Plaintiff’s

⁹ Despite this Court’s guidance, the Board dismissed out of hand Plaintiff’s sworn statement explaining why he applied for VSP. *See Valles-Prieto*, 159 Fed. Cl. at 617–18 (holding that a petitioner’s testimony is relevant evidence that must be considered by the Board).

February 2013 final military separation physical noted many similar symptoms; Plaintiff suffered from, among other things, TBI, delayed PTSD, hearing loss, tinnitus, dizziness, vertigo, lightheadedness, memory lapses, night sweats, anxiety, headaches, and depression—yet, contrary to DoD policy, that evaluation concluded he was fit to be released without limitations. AR 99.

43. In April 2018, after years of struggling with his TBI- and PTSD-related symptoms, Plaintiff sought correction of his military records from the Board to reflect the medical retirement he should have received upon separation. Plaintiff explained that the Navy erred by not referring him for disability processing because his TBI and PTSD rendered him incapable of performing the duties of his rating as a Marine Infantry Unit Leader. Plaintiff should have been referred to the DES, where he should have been found unfit for service and medically retired. Plaintiff's request in April 2018, as it remains today, is that the Board correct this injustice by correcting his record to reflect the military retirement that would have resulted from a proper referral and properly conducted DES process.

II. THE MILITARY DISABILITY EVALUATION SYSTEM

A. Legal And Regulatory Guidance

44. Chapter 61 of Title 10 of the U.S. Code authorizes “the Secretary concerned” to medically retire a servicemember who “is unfit to perform the duties of the member’s office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3).” 10 U.S.C. § 1201(a). The law requires that (1) “the disability is of a permanent nature and stable,” (2) “the disability is not the result of the member’s intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence,” and (3) the member either served for at least 20 years or “the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of

the determination.” 10 U.S.C. § 1201(b). Servicemembers eligible for a disability retirement include “member[s] of a regular component of the armed forces entitled to basic pay.” *Id.*

45. Title 10 also establishes the Disability Evaluation System process through which the Navy and other military departments discharge disabled servicemembers. The DES process authorizes the Secretaries within the Department of Defense, including the Secretary of the Navy, to separate a servicemember when a Secretary determines that the servicemember is unfit to perform the duties of his or her office, grade, rank, or rating due to disability. Each Secretary has broad discretion to implement regulations for determining fitness for continued service. *See* 10 U.S.C. § 1216 (a)-(b).

46. A regulation promulgated by the Secretary of the Navy, SECNAVINST 1850.4E, establishes the DES process for Navy and Marine Corps servicemembers under the provisions of Chapter 61 of Title 10 of the U.S. Code and DoDI 1332.38.

B. DES Referral

47. Commanding officers and individual medical officers are required to identify promptly for disability evaluation any servicemember having a physical impairment, which renders questionable the ability of said servicemember to perform reasonably the duties of their office, grade, rank, or rating. *See* SECNAVINST 1850.4E encl. 1 § 1005; *id.* encl. 3 § 3106.

48. A DES referral must be made within one year from the date of diagnosis of a medical condition that does not appear to meet medical retention standards, but may be earlier if the examiner determines that the servicemember will not be capable of returning to duty within one year. *See* DoDI 1332.38 encl. 3, pt. 1, § E3.P1.6.1.

C. MEB Evaluation

49. After referral, the first phase of the DES process involves review by a Medical Evaluation Board (“MEB”) of an individual’s medical status and duty limitations. *See id.*

§ E3.P1.2.1. The MEB is charged with determining whether any of a servicemember's medical conditions render the servicemember unable to meet the retention standards set forth by the servicemember's particular military branch. *See* DoDI 1332.38 encl. 4, attach. 1, § E4.A1.1.2.11.2.

50. The MEB does not state a conclusion of unfitness due to disability, or assign a disability percentage rating, but instead documents a medical opinion that informs the next phase of the DES process to the extent that it proceeds. *See* SECNAVINST 1850.4E encl. 3, § 3104. If the MEB decides that none of the servicemember's medical conditions render the servicemember unable to meet retention standards, the member is returned to full active duty.

51. However, if the MEB decides that one or more of the servicemember's medical conditions render the servicemember unable to meet retention standards, the member is referred to an informal Physical Evaluation Board ("PEB") process within DES. *See* DoDI 1332.38 encl. 4, § E4.A1.1.2.11.4; SECNAVINST 1850.4E encl. 3, § 3201.

D. PEB Process

52. Upon referral from an MEB, an informal PEB renders a decision on fitness. A servicemember can be found: (a) fit for duty; (b) unfit for duty but ineligible for disability benefits because, among other reasons, the disabling condition was not incurred in the line of duty, existed prior to service, was the result of intentional misconduct or wilful neglect, or was incurred during an unauthorized absence; (c) unfit for duty and eligible for medical separation with disability severance pay; or (d) unfit for duty and eligible for medical retirement with disability retirement pay and other benefits. *See generally* DoDI 1332.38.

53. DoDI 1332.38 requires that a servicemember be found unfit if the evidence "establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating." *See* DoDI 1332.38 encl. 3, § E3.P3.2.1. In making a

determination of a member's ability to so perform his or her duties, DoDI 1332.38 provides the following criteria for consideration: Whether the "medical condition represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty" and whether the "medical condition imposes unreasonable requirements on the military to maintain or protect the member." *See id.* §§ E3.P3.2.2.1-2.2.2.

54. If a servicemember is found unfit and eligible for disability benefits (*i.e.*, under outcomes (c) or (d) above), the PEB must assign a percentage disability rating for each unfitting condition in accordance with Veterans Affairs Schedule for Rating Disabilities ("VASRD") pursuant to 10 U.S.C. § 1216a. Title 10 of the U.S. Code and the rules of each of the service branches mandate that the armed forces follow the VASRD when rating the disability of servicemembers found unfit for duty due to disability. *See* 10 U.S.C. §§ 1201, 1203; National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1642(a), 122 Stat 465 (codified at 10 U.S.C. § 1216a).

55. A PEB's disability rating controls the amount of military benefits and services to which the servicemember is entitled upon discharge. A disability rating below 30 percent dictates that a servicemember is "medically separated" with a one-time, lump-sum, severance payment and no additional benefits. A disability rating of 30 percent or above dictates that a servicemember is "medically retired" with disability retirement pay and other benefits, such as lifetime healthcare coverage and military commissary and exchange privileges. *See* 10 U.S.C. § 1201.

56. A servicemember found unfit may appeal the informal PEB's decision in writing or in person at a formal PEB hearing with legal representation. *See* DoDI 1332.38 encl. 3, §§ E3.P1.3.3.4–3.3.5. A servicemember found fit for duty is not entitled to a formal PEB since a finding of fit does not cause involuntary separation due to disability. *See id.* § E3.P1.3.3.1.2.

III. PROCEDURAL HISTORY

57. Plaintiff first applied to the Board for correction of his record in April 2018. The Board sought a medical advisory opinion, which was submitted to the Board on April 11, 2019. Plaintiff responded to the advisory opinion on July 23, 2019. The Board issued its decision, denying Plaintiff's application, on August 5, 2019. This lawsuit followed, when Plaintiff filed his Original Complaint on October 6, 2021. ECF No. 1.

58. Following oral argument and mutual Motions for Judgment on the Administrative Record, the parties agreed that the matter should be remanded to the Board for further consideration. This Court so ordered on September 21, 2022.

59. Plaintiff submitted a supplemental brief to the Board on November 18, 2022.¹⁰ The Board again requested a medical advisory opinion, which was sent to Plaintiff on February 20, 2023, and Plaintiff again responded to the opinion on March 16, 2023. Finally, the Board issued a second denial of Plaintiff's application on or about May 8, 2023. Unfortunately, the Board's decision is once again arbitrary, capricious, unsupported by substantial evidence, and contrary to law. Indeed, the Board proactively disclaimed its obligation to follow controlling laws and regulations in evaluating Plaintiff's application. This Amended Complaint follows.

IV. PLAINTIFF MET HIS BURDON TO SHOW BOTH ERROR AND INJUSTICE BY SHOWING THAT HE WAS UNFIT FOR SERVICE AT DISCHARGE

60. Plaintiff demonstrated that he was unlawfully and unjustly discharged without appropriate medical processing, and he should have been referred to the DES system and, ultimately, medically retired, by showing that he was unfit to perform the duties of his office, grade, rank, or rating at the time of his separation. *See* SECNAVINST 1850.4E, pt. 3, § 3301

¹⁰ Plaintiff attaches to this Amended Complaint, as Exhibit B, his supplemental memorandum to the Board, and hereby incorporates it by reference into this Amended Complaint.

(“The sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating.”).

61. At the outset, there is no dispute over whether Plaintiff meets every requirement for medical retirement other than unfitness to perform his duties. His disabilities were (and are) of a permanent nature and stable (indeed, he suffers the effects of his disabilities to this day), they were not the result of misconduct or willful neglect, they are at least 30 percent disabling under the standard schedule of ratings established by the VA, and they were incurred on active duty while entitled to basic pay (in fact, they were incurred in combat while deployed). *See* 10 U.S.C. § 1201.

A. The Medical Evidence Shows That Plaintiff Was Substantially Impaired By His Unfitting Conditions

62. In his application and supporting materials, Plaintiff demonstrated that, from the time of his injury in June 2010 through the end of his service in the Marine Corps, he suffered consistent—and consistently deteriorating—symptoms from his unfitting conditions of PTSD and TBI. Just a few months after his injury, Plaintiff underwent a neuropsychological evaluation with Dr. Karen Johnson of Carolina Psychological Health Services. AR. 178. Dr. Johnson diagnosed Plaintiff with cognitive disorder, chronic moderate PTSD, and a Global Assessment of Functioning (“GAF”) score of 40–45, based on clinical evaluations in July and September 2010. *Id.* In January of 2013, just a few months before Plaintiff was discharged from the Marine Corps, he was evaluated by psychiatrist Dr. Ray Vogel, who assessed Plaintiff at a GAF score of 40. AR 57. In other words, at the time of his discharge, Plaintiff’s deteriorating symptoms of cognitive impairment characterized by “[s]ome impairment in reality testing or communication; or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood” were unfitting for continued service in the Marine Corps. AR 106.

63. In her 2010 examination of Plaintiff, Dr. Johnson diagnosed Plaintiff with cognitive disorder and chronic, moderate PTSD. AR 178. She noted a decline in neurocognitive abilities, “[s]ignificant proactive interference effects, wherein previously learned information interfered with [the] ability to learn new information,” and “impaired processing speed.” *Id.* Based on her diagnoses, Dr. Johnson expressed concern regarding Plaintiff’s future. *Id.* Indeed, even the Board acknowledged this evaluation as “potential” evidence that Plaintiff’s conditions interfered with his ability to perform the duties of his office, grade, rank, or rating. *See* Board Decision, Ex. A at 9 & n.22. Unfortunately the Board chose to ignore this evidence, based on a mis-reading of other evidence in the record.¹¹ This medical evaluation alone should have been sufficient notice to Plaintiff’s superiors that he needed be evaluated via the DES process.

64. However, the later evaluation by Dr. Vogel, just a few months prior to Plaintiff’s discharge, shows that Plaintiff’s condition had deteriorated, and provides more detailed evidence that Plaintiff was unfit to perform the duties of his office, grade, rank, or rating. Dr. Vogel found that Plaintiff’s PTSD was connected to additional diagnoses of insomnia, generalized anxiety disorder, panic disorder with agoraphobia, and major depressive disorder. AR 56–57. Plaintiff experienced “chronic, severe symptoms of intensive revivification or re-experiencing; avoidance of possible triggering factors, with numbing of responsiveness; and hyperarousal of the autonomic

¹¹ Specifically, the Board cited a medical appointment eight days later, on October 12, 2010, that was scheduled to evaluate whether Plaintiff could safely return to normal service; the Board mischaracterized the outcome of that appointment as having determined that Plaintiff’s condition had improved such that he could be removed from LIMDU. *See* Board Decision, Ex. A at 9 n.22. In fact, the outcome of the appointment was that Plaintiff was *kept on LIMDU* and referred for a follow-up neurology appointment before he would be permitted to return to normal duty status. AR 178–179. Plaintiff was not, in fact, removed from LIMDU until over two months later, after he had formally checked in to his non-operational, out-of-rate FMTB-E billet. The Board also cited Plaintiff’s subsequent performance at FMTB-E; the fallacy of this reasoning, which dominates the Board’s decision, is discussed below.

nervous system.” AR 58. Plaintiff’s panic disorder caused “severe, acute anxiety which can be temporarily debilitating and far-reaching in its effects.” *Id.* “It limits his mobility and makes it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone.” *Id.*

65. Dr. Vogel noted that Plaintiff’s TBI caused “serious memory deficits, visual spatial disturbances, apraxia, communicational deficits, increased verbal explosiveness, social aversion, and impaired executive functioning.” AR 58. Dr. Vogel characterized Plaintiff’s memory deficits as “substantial and persistent.” AR 68. Plaintiff’s visual spatial orientation was impaired, including his ability to navigate, such that “he has gotten lost just going home,” and had to rely on his wife to do most of the driving. AR 70.

66. Plaintiff also highlighted evidence that his symptoms were persistent and continuous, albeit treated piecemeal, from the time of his injury through his discharge from the Marine Corps. The major depression associated with his PTSD was a recurrent cause of medical treatment and, on occasion, hospitalization, but the history of PTSD-related depression is just one example. Another would be the combination of nausea and vertigo secondary to Plaintiff’s TBI:

- Plaintiff was prescribed Quetiapine Fumarate for nightmares until June 16, 2010. AR 427.
- On September 14, 2011, he was diagnosed with a single episode of major depressive disorder based on extreme irritability, decreased memory and concentration, and anhedonia. The medical provider also noted that Plaintiff reported having suffered these symptoms for 18 months at that point. AR 181.
- Plaintiff was prescribed Promethazine HCl for nausea and vomiting until October 4, 2011. AR 427.
- Plaintiff was prescribed Ondansetron (Zofran ODT) for nausea until June 2, 2012. AR 426.

- On January 4, 2013, Plaintiff was again diagnosed with major depression and was prescribed Venlafaxine (Effexor), a drug indicated for the treatment of major depressive disorder.¹² AR 157–62; 182–83.
- On January 22, 2013, Plaintiff was again seen for major depression, this time reporting at least a five-month history of “exacerbated depression.” Ex. A at 8.
- Plaintiff was prescribed Propranolol HCl for the treatment of anxiety until January 2013. AR 426.
- On February 4, 2013, Plaintiff was referred back to the Naval Health Clinic Camp Lejeune Mental Health Clinic for acute anxiety and anger. Plaintiff reported six months of increasing TBI and PTSD symptoms. *Id.*
- On February 13, 2013, Plaintiff’s separation physical noted delayed PTSD, sensorineural hearing loss, major depression, history of TBI, and various secondary symptoms of PTSD and TBI, including “[d]izziness, vertigo, and lightheadedness.” AR 37, 188.
- On February 14, 2013, Plaintiff was examined and again diagnosed with PTSD, history of TBI, and multiple secondary symptoms of those conditions. Plaintiff was recommended to undergo continued mental health follow-ups. AR 189.
- On February 21, 2013, Plaintiff again discussed the medications he was taking for PTSD and depression with a health provider. AR 149–52. Plaintiff reported to this provider that he experienced a “constant state of vertigo.” *Id.*

¹² U.S. Food and Drug Administration, EFFEXOR – venlafaxine hydrochloride tablet, https://www.accessdata.fda.gov/drugsatfda_docs/label/2008/020151s0511bl.pdf.

B. Plaintiff Demonstrated How His Disabilities Directly Interfered With The Duties Of His Office, Grade, Rank, Or Rating

67. Plaintiff explained his duties and associated tasks in detail and further explained how his medical condition prevented him from the performance of the duties of his office, grade, rank, or rating. Plaintiff explained that he was an infantry Marine, which is a combat-oriented role. “Infantry Marines,” including Infantry Unit Leaders, are “combat leader[s]” who “locate, close with and destroy the enemy by fire and maneuver” and are “able to secure and defend [them]self and vital terrain.” MOS Manual § 3110, ¶ 1.

68. Plaintiff’s rating, Infantry Unit Leader (MOS 0369), required him to supervise and coordinate “the establishment and operation of unit command posts, the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort.” *See id.*, ¶ 16(a). The Marine Corps Infantry Training and Readiness Manual explains that an Infantry Unit Leader must be capable of “control[ing] the fire and maneuver of his assigned section,” “repel[ing] the enemy assault by fire and close combat,” “[e]ngag[ing] targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade,” “request[ing] close air support,” and “navigat[ing] to designated points using a topographic map, lensatic compass, protractor, and global positioning equipment while dismounted and mounted.” Marine Corps Infantry Training and Readiness Manual, NAVMC 3500.44C, at 9-3 to 9-17. Indeed, spatial awareness—from navigation to directing the deployment of air and artillery power on the battlefield—is a particularly important capability for both infantry Marines generally, and Infantry Unit Leaders in particular. *See, e.g., id.* at 8-3 to 8-5, 9-11 to 9-21 (emphasizing navigation and directing of close air support).

69. Plaintiff explained to the Board that his own experience as an infantry Marine bore out these requirements. Plaintiff’s Navy and Marine Corps Achievement Medal with Combat

Distinguishing Device and Combat V was awarded, at least in part, based on Plaintiff “expos[ing] himself to the enemy’s small arms fire” during an attack in order to “gather[] direction and distance and formulate[] an artillery call for fire mission on the enemy’s position.” AR 49. Plaintiff’s FITREPs from his time deployed extol his accomplishments in controlling “air assets on several occasions while conducting aerial reconnaissance of certain areas where future patrols and operations were to occur.” AR 373.

70. These requirements are incompatible with Plaintiff’s medical condition following his June 2010 blast injury. This is why he was never able to return to operational duty. The spatial disorientation caused by Plaintiff’s TBI caused him to “get[] lost in unfamiliar surroundings, ha[ve] difficulty reading maps, following directions and judging distances[, and have] difficulty using assistive devices such as GPS.” AR 70. He could hardly be expected to fulfill the Infantry Unit Leader duties of navigating with a map and compass, conducting mounted and unmounted land navigation, and navigating with a GPS.

71. Following his blast injury, Plaintiff was “[o]ccasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation,” AR 69, and he could hardly be expected to calculate an artillery call for fire or request and direct close air support. Indeed, to this day Plaintiff has difficulty calculating *anything*; in a March, 2018, evaluation with Dr. Michael Blumenfield, Dr. Blumenfield noted that Plaintiff “could calculate that there are 20 nickels in a dollar, but when calculating how much was 22 nickels, he said \$1.20.” AR 165.

72. An Infantry Unit Leader, like most military leaders, requires exceptional communication skills to direct his subordinates. *See, e.g., Fuentes v. United States*, No. 20-230C, 2021 WL 6015180, at *28 (Fed. Cl. Dec. 10, 2021) (The duties of servicemembers who “served

in leadership roles . . . include[] communicating with subordinates during missions.”). But Plaintiff’s TBI caused “apraxia, communicational deficits, increased verbal explosiveness, social aversion, and impaired executive functioning.” AR 58.

73. Plaintiff could hardly be expected to operate effectively, adapt to changing circumstances, or manage the anxiety that naturally accompanies a dangerous situation in the combat environment that is the bread and butter of infantry Marines when his “Panic Disorder ([w]ith Agoraphobia) brings severe, acute anxiety which can be temporarily debilitating and far-reaching in its effects upon the [Plaintiff’s] life,” and “makes it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone.” AR 58.

74. Further, Plaintiff explained that additional considerations listed in DoDI 1332.38 supported his application. One such additional consideration is whether a servicemember’s condition poses a decided medical risk to himself or the welfare of his fellow members. As an Infantry Unit Leader, had he ever returned to operational duty in his own rating, Plaintiff would have been at significant risk of suffering severe, acute anxiety that could be temporarily debilitating in the midst of a combat operation.

75. His medical record indicated that his TBI and PTSD caused “chronic, severe symptoms of intrusive revivification or re-experiencing” of trauma, “recurrent episodes of intense, panic-level anxiety” including a “pounding heart, sweating, shortness of breath, trembling, and sense of impending doom,” “visual spatial disturbances,” “los[ing] track of brief moments of time,” “substantial and persistent memory deficits,” “difficulty maintaining attention or concentration on a task . . . for more than a moment’s time,” problems understanding “spoken and written language” and “learning new material,” and “[m]oderately impaired judgment.” AR 57, 68–70. Plaintiff’s panic disorder brought “severe, acute anxiety which [could] be temporarily

debilitating,” limited Petitioner’s “mobility,” and made it “difficult to go anywhere or do anything out of the ordinary.” AR 58.

76. A panic attack in the midst of combat would have been a recipe for disaster, both for Plaintiff and for the Marines serving under him; his condition posed a clear risk to his own welfare and to the safety of his fellow servicemembers.

77. Another DoDI 1332.38 consideration Plaintiff addressed is whether a servicemember’s condition imposes an unreasonable requirement on the military to protect and maintain him. Plaintiff explained (and as demonstrated above, his medical record revealed) that he required consistent treatment for major depressive disorder caused by his PTSD and for vertigo and nausea caused by his TBI. *See, e.g.*, AR 64 (Dr. Vogel stating that Petitioner “needs to seek follow up treatment . . . including medication management and ‘talk therapy,’ and cognitive/memory enhancement services, in order to alleviate the many symptoms and conditions which have developed while he has been in the service.”). Plaintiff’s persistent cognitive, emotional, and mental health issues required constant treatment, which he could not have received in the sort of overseas combat environment that is typical for an infantry Marine. He may have been able to get the treatment he needed at FMTB-E, but it would have imposed an unreasonable requirement on the service to continue to provide Plaintiff necessary treatment during an operational tour, which is the duty Plaintiff is expected to perform as an Infantry Unit Leader.

78. Plaintiff thoroughly demonstrated that he had suffered an error and injustice insofar as he was unfit to perform the duties of his office, grade, rank, or rating at the time of his discharge, that he should have been referred for DES processing, and that he should have been medically retired for unfitting conditions that were at least 30% disabling. Unfortunately, the Board relied

on inapposite evidence, misapplication of the law, and fallacious reasoning to deny Plaintiff the correction to which he is entitled.

V. THE BOARD’S DECISION WAS ARBITRARY, CAPRICIOUS, UNSUPPORTED BY SUBSTANTIAL EVIDENCE, AND CONTRARY TO LAW

79. The Board’s most recent denial of Plaintiff’s application is arbitrary, capricious, unsupported by substantial evidence and contrary to law. The Board appears to be inappropriately fixated on Plaintiff’s apparently adequate performance at FMTB-E¹³ and his participation in the VSP. In pursuing this fixation, the Board disclaimed its legal and regulatory obligations, capriciously and inconsistently applied the presumption of regularity, adopted inconsistent interpretations of the evidence, and, yet again, failed to meaningfully confront the reality of the duties required of Plaintiff’s office, grade, rank, or rating.

A. The Board’s Decision Is Tainted By Its Rejection Of Legal Authority

80. The Board announces, “as a preliminary matter,” that it is “not the PEB and does not make medical fitness determinations.” Board Decision, Ex. A at 3. The Board then goes on to disclaim any obligation to rely upon or apply the controlling regulations: “Neither DoDI 1332.38 nor SECNAVINST 1850.4E applies to this Board; rather, they provide regulatory guidelines for the Board to use in assessing whether there exists an error or injustice in your naval record.” *Id.* The Board rejects the authority of this Court, claiming that reliance on caselaw such as *Nyan v. United States* is “misplaced.” *Id.* at 3–4. From this, the Board concludes that it “did not err in failing to make explicit findings as to the duties of [Plaintiff’s] ‘office, grade, rank, or rating’ as an Infantry Unit Leader at the E-6 paygrade in Docket No. 3901-18.” *Id.* at 4.

¹³ Plaintiff disputes this characterization and presented substantial evidence that his performance, even in the non-operational environment of FMTB-E, suffered significantly as a result of his disabling conditions. That said, even if the characterization were accurate, it would be inapposite.

81. These assertions are simply false. The guidance in both of the *Nyan* cases was directed to the Board, and numerous other cases have held that, when evaluating whether a servicemember should have been referred to the DES process, the Board must apply the standards that a PEB would apply (namely, DoDI 1332.38 and SECNAVINST 1850.4E). *See Nyan I*, 153 Fed. Cl. 234; *Nyan II*, 154 Fed. Cl. at 468 (remanding to the Board with direction to make the findings required by the opinion in *Nyan I*); *see also, e.g., Kelly v. United States*, 157 Fed. Cl. 114, 119 (Fed. Cl. 2021), *vacated on other grounds*, 69 F.4th 887 (Fed. Cir. 2023) (“Although Plaintiff was never referred to the PEB for evaluation before the Navy discharged him, the standard and related considerations established in SECNAVINST 1850.4E, as discussed above, guide the Court in evaluating the propriety of the BCNR’s decision-making process.”) (citing *Sawyer v. United States*, 930 F.2d 1577, 1581 (Fed. Cir. 1991) (recognizing the BCNR “is competent to make a disability determination in the first instance”); *Beckham v. United States*, 392 F.2d 619, 622 (Ct. Cl. 1968) (recognizing the BCNR, “like other administrative bodies, is bound by its own regulations”)). The Board’s position is also directly at odds with this Court’s remand instructions, which directed the Board to “[c]onsider all relevant evidence, apply the relevant criteria for assessing a service member’s fitness, as set forth in Secretary of the Navy Instruction (SECNAVINST) 1850.4E and Department of Defense Instruction (DoDI) 1332.38 § E3.P3.2.1.” ECF No. 35 at 5 (Joint Motion for a Voluntary Remand); *see also* ECF No. 36 (order granting Joint Motion for a Voluntary Remand).

82. That the Board’s decision was contrary to law is unsurprising given that the Board refused to rely on precedent, law, or its own regulations. This decision infected every subsequent piece of the Board’s analysis, from its misapplication of the presumption of regularity, to its

analysis of facts, to its refusal, yet again, to seriously consider the duties required of Plaintiff's office, grade, rank, or rating.

B. The Board Applied Standards Of Review That Are Contrary To Controlling Authority

83. Perhaps influenced by its rejection of controlling law and authority, the Board repeatedly relied on standards of review and the application of burdens that are not supported by (or that actively contradict) law and regulations.

84. For example, the Board acknowledged that Plaintiff's separation physical¹⁴ did not comply with regulations in place at the time. Nevertheless, the Board applied the presumption of regularity to the separation physical and blamed Plaintiff for the examining physician's failure to comply with regulations. *See* Board Decision, Ex. A at 18. This mistake may be due to the Board's failure to reference the appropriate policy guidance; the Board claims to have referenced the Navy MANMED, *id.* at 18 n.40, but the regulation cited was promulgated as policy guidance from the Assistance Secretary of Defense for Health Affairs, *see Dep't of Defense, Memorandum Regarding Policy Guidance for Separation Physical Examinations* (Oct. 14, 2005), Ex. C. The policy guidance, which was in force at the time of Plaintiff's separation physical, places the burden of compliance on "military treatment facilities and commands and commanders at all levels," not the servicemember. *Id.* The policy in place at the time required that, "at a minimum, a separation physical examination . . . will include . . . any indicated specialty consultations." *Id.* Plaintiff's separation physical indicated a need for neurology consultation, but such a consultation is nowhere to be found in Plaintiff's record; his separation physical was irregular and not conducted in

¹⁴ Along with Plaintiffs FITREPs at FMTB-E, this separation physical is one of the two pieces of evidence the Board most heavily relied upon.

compliance with military standards. Therefore, the separation physical is not entitled to the presumption of regularity.

85. The Board ignored the responsibility Plaintiff's command had to monitor his well-being and to participate, as necessary, in the DES process. Indeed, the Board even asserted that only medical providers, not military leaders, were relevant to MEB referral, and thereby dismissed without consideration relevant evidence that Plaintiff's superiors were aware of and had commented on the fact that Plaintiff's condition rendered him unfit for service as an infantry Marine. Board Decision, Ex. A at 11 ("This advice did not come from any medical providers, and it is their assessment which is relevant to a MEB referral."). This is patently false; a servicemember's command is also obligated to identify members for referral, and, as such, Plaintiff's superiors' opinions regarding his fitness for operational duty are, as a matter of Navy regulations, relevant to evaluating Plaintiff's fitness. *See* SECNAVINST 1850.4E encl. 1 § 1005 ("[L]ine commanders, commanding officers of MTFs and individual medical and dental officers shall promptly identify for evaluation by Medical Boards and appropriate referral to the PEB under this instruction, those members presenting for medical care whose physical or mental fitness to continue naval service is questionable."); *id.* encl. 3 § 3106 (same).

86. Elsewhere, the Board invents standards of review out of whole cloth. The sole, unambiguous standard for fitness is whether a servicemember is "unable to reasonably perform the duties of his or her office, grade, rank, or rating." DoDI 1332.38 encl. 3, pt. 3, § E3.P3.2.1. Nonetheless, the Board reduced this requirement to the duties Plaintiff "would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit **in a garrison**

environment.¹⁵ Board Decision, Ex. A at 15 (emphasis added). There is absolutely no support for limiting consideration to duties in a garrison environment; even the Board acknowledges that it runs counter to “the pattern of repeated deployments reflected in [Plaintiff’s] own career.” *Id.* Such a limitation also blatantly contradicts controlling authority.

87. Department of Defense guidance makes clear that the fitness determination must be based on the full range of common military tasks a servicemember is expected to perform in their office, grade, rank, or rating. DoDI 1332.38 encl. 3, pt. 3, § E3.P3.4.1.1. “Determining whether a member can reasonably perform his or her duties includes consideration of” deployability. *Id.* §§ E.3.P.3.4.1, 4.3.1 (fitness determination requires considering, “[w]hen a Service member’s office, grade, rank or rating requires deployability, whether a member’s medical condition(s) prevents positioning the member individually or as part of a unit with or without prior notification to a location outside the Continental United States”). As discussed above, an Infantry Unit Leader’s key task is combat; deployability is a crucial consideration, as is capacity to engage in combat. As an Infantry Unit Leader, Plaintiff’s ability to perform the duties of his office, grade, rank, or rating cannot be divorced from theatre operations or the train-up periods associated with deployment. An infantry Marine who cannot “locate, close with and destroy the enemy” by fire and maneuver or “secure and defend [themselves] and vital terrain” is not fit to perform the duties of his office, grade, rank or rating. MOS Manual § 3110, ¶ 1.

88. To be sure, there are many roles in the U.S. military in which deployability is not intrinsically linked to the duties of one’s office, grade, rank, or rating.¹⁶ A non-deployable chaplain

¹⁵ As Plaintiff explains above, the Board’s assertion that Plaintiff’s duties at FMTB-E were comparable to those of an infantry Marine, even in the inappropriately limited “garrison environment,” is false; even if it weren’t, such a limitation on duties considered is unjustifiable.

¹⁶ Plaintiff does not concede that there are any such noncombatant roles within the Marine Corps. As explained at greater length in Plaintiff’s Original Complaint, ECF No. 1 at 9–10, and Motion

may minister to and counsel servicemembers effectively in the garrison environment. A military healthcare provider can spend their entire career in stateside medical facilities. But there are no chaplains or healthcare providers in the Marine Corps. Unlike his chaplain and healthcare trainees at FMTB-E, Plaintiff's rate cannot be limited to a "garrison environment." The Board offers no plausible explanation for how a Marine can lead others in combat, or locate, close with, and destroy the enemy, in a garrison environment. Infantry Unit Leaders, like Infantry Riflemen (Plaintiff's prior PMOS), are combatants, first and foremost.

89. The Board's fabricated "garrison environment" is a tacit acknowledgment that Plaintiff was clearly unfit for operational infantry service. Unable to square this acknowledgment with its decision, the Board attempted to suggest that Plaintiff could instead serve as something of a noncombatant combatant in a "garrison environment." But such service necessarily excludes the most important common military tasks required of an Infantry Unit Leader; there is no support to be found in any Marine Corps regulation cited by the Board nor any that Plaintiff is aware of for a Marine infantryman who can neither deploy nor fight.

90. The Board's reasoning was contrary to law and resulted in a decision that was arbitrary, capricious, contrary to law, and unsupported by substantial evidence.

C. The Board's Reliance On FMTB-E FITREPS Is Thoroughly Misplaced

91. The Board relied extensively on Plaintiff's allegedly adequate performance at FMTB-E to conclude that Plaintiff was fit to perform the duties of his office, grade, rank, and rating. *See, e.g.*, Board Decision, Ex. A at 9 n.22 (dismissing evidence that Plaintiff's medical

for Judgment on the Administrative Record, ECF No. 20 at 10, the Marine Corps maintains by both doctrine and regulation a strong culture of "every Marine a rifleman." This sets the Marine Corps apart from the other service branches and leaves it doubtful that a nondeployable servicemember could be fit for service in any Marine Corps role. However, the Court need not come to any conclusions about the Marine Corps as a whole; Plaintiff's PMOS was indisputably a combat role, even relative to other ratings in the broadly combat-oriented Marine Corps.

record reflected unfitness as early as his October 4, 2010 neuropsychological examination based, in part, on his “successful performance of duties over the next 28 months”); *see also id.* at 14–16. This reliance is thoroughly misplaced.

92. Plaintiff explained that, according to what he was told by his superiors (and his actual experience in the billet), his orders to FMTB-E were intended to provide him with a non-operational respite from the rigors of infantry life. *See, e.g.,* Suppl. Memo., Ex. B at 15; AR 26. Indeed, the Board acknowledged that Plaintiff’s orders to FMTB-E were “likely based upon the needs of the Marine Corps and/or a desire to provide you **the well-deserve[d] opportunity to ‘take a knee’** after your multiple combat deployments.” Board Decision, Ex. A at 12 (emphasis added). FMTB-E was light duty, a sort of “de facto LIMDU.” Despite this acknowledgment, the Board inappropriately treated performance at FMTB-E as a proxy for ability to perform in an infantry Marine unit; however, the two environments are not even comparable.

93. Plaintiff’s FITREPS from FMTB-E explain that his duties consisted of training “Navy Medical Department personnel and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps.” *Id.* at 15. Plaintiff’s performance at FMTB-E cannot be likened to training infantry Marines for the simple and obvious fact that Navy Medical Department personnel and Religious Program personnel are not infantry Marines; indeed, they are expressly non-combatants. *See* SECNAVINST 1730.7E encl. 2, ¶ 14, Religious Ministry Within the Department of the Navy (Mar. 11, 2019) (“Chaplains are non-combatants. They cannot bear arms or seek weapons training in connection with their military duties nor will they seek weapons or warfare qualifications.”); Bureau of Medicine Instruction (BUMEDINST) 1500.33A at 3-4, Standard Organizational Policy for Navy Nursing Competencies and Clinical Readiness (May 21, 2018) (noting that “Direct patient care is the gold standard for

competency assessment,” while offering no reference whatsoever to combat, weapons proficiency, or other fighting skills).

94. The people Plaintiff was training at FMTB-E were preparing for a restorative mission in one form or another; medical personnel help to treat illness and wounds, while chaplains help to meet psychological and spiritual needs. But an infantry Marine’s mission is destructive; the Infantry Unit Leader must be ready for and capable of combat. A Marine Infantry Unit Leader supervises and coordinates “the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort.” MOS Manual § 3110, ¶ 16(a). He leads Infantry Riflemen (Plaintiff’s prior PMOS) who are “capable of the full spectrum of combat, day or night, against opposing forces with a full spectrum of capabilities” *See* MOS Manual § 3110, ¶ 1. In short, comparing the duties of an instructor preparing noncombatant chaplains and medical personnel for service with Marines to the duties of an Infantry Unit Leader who must be able to actually lead infantry Marines in combat is simply a non-sequitur.

95. Similarly, although the Board emphasized its belief that an infantry Marine like Plaintiff was a good fit for the role at FMTB-E, there is no getting around the fact that it simply was not an Infantry Unit Leader billet. The billet was generally coded (hence the confusion, found in multiple places, as to whether the BMOS should match Plaintiff’s 0369 PMOS or some other MOS, like 3529 (the Motor Transport Maintenance Chief MOS that appears on several documents)). This confusion is readily resolved: The Government has already conceded that Plaintiff “was not serving in his MOS,” meaning that Plaintiff’s FMTB-E FITREPS are an inadequate basis for evaluating his potential performance in an operational infantry unit, serving in an Infantry Unit Leader’s role. *See* ECF No. 23 at 9 (Def.’s Mot. to Dismiss).

96. Crucially, the Board also conceded that Plaintiff's TBI and PTSD symptoms are not in question. *See* Board Decision, Ex. A at 10 ("While he [Dr. Blumenfield] confirmed your diagnoses of PTSD and TBI, with symptoms both at the time of and since your discharge (**which were not in question**)") (emphasis added). The Board may not have found a detailed analysis of Plaintiff's duties in Dr. Blumenfield's report, but, as explained above, Plaintiff described those duties and how his symptoms, "which were not in question," impacted his ability to perform those duties, in exacting detail. The Board attempts to explain away this concession by relying on Plaintiff's performance at FMTB-E, but nowhere in its decision does the Board attempt to square Plaintiff's symptoms with the duties of an infantry Marine. As explained above, Plaintiff's symptoms and the duties of his office, grade, rank, or rating were incompatible—which is why Plaintiff never returned to operational duty after his injury.

D. The Board Severely Misapplied The Presumption Of Regularity

97. The Board's next glaring legal error was its misapplication of the presumption of regularity. Plaintiff, of course, does not dispute that there is a presumption of regularity that must be overcome with evidence, but the presumption itself is not evidence, nor is it an excuse simply to ignore clear evidence rebutting the presumption. "The presumption of regularity is not absolute," and where, as here, there is substantial evidence of irregularity, "[t]he presumption of [official] regularity may also operate in reverse;" that is, in the face of evidence of *irregularity*, the burden shifts to the proponent to show that an official action was regular. *Ashley v. Derwinski*, 2 Vet. App. 307, 309 (1992) (citing *Ashley v. Derwinski*, 2 Vet. App. 62, 66 (1992) (internal quotations omitted)).

98. Instead of considering whether the presumption could be overcome, the Board merely applied the presumption to that evidence which supported its conclusion, and then used such "presumed regular" evidence to rebut evidence that clearly showed the irregularity of the

Marine Corps' failure to refer Plaintiff for DES evaluation. As a matter of law, the Board's failure to consider the totality of the evidence in determining whether the presumption of regularity even applies at the outset constitutes clear error. *See Toomer v. Shinseki*, 524 F. App'x 666, 670 (Fed. Cir. 2013) ("Because the Veterans Court erred as a matter of law in failing to consider the totality of Toomer's irregularity evidence, and in weighing the Secretary's rebuttal evidence together with Toomer's evidence, we remand the case for a correct application of the *Ashley* framework.").

99. As a matter of factual analysis, however, the Board's misapplication of the presumption of regularity also resulted in the Board simply ignoring much of the most relevant evidence. Perhaps most egregiously, the Board entirely dismissed the extensive evidence of debilitating TBI and PTSD documented by Dr. Vogel, the psychiatrist/psychologist who examined Plaintiff for VA disability purposes; his evaluations were not accorded the presumption of regularity. The Board dismissed Dr. Vogel's examinations out of hand because it alleged that "Dr. Vogel had no professional obligation to provide an accurate assessment of your condition and its effects, as he did not evaluate you for treatment purposes."¹⁷ Board Decision, Ex. A at 10. The notion that an evaluating physician would have "no professional obligation to provide an accurate assessment" is simply ludicrous. *Id.* The Board's failure to apply the presumption of regularity to Dr. Vogel's evaluations renders the Board's decision arbitrary, capricious, contrary to law, and unsupported by substantial evidence.

100. The Board itself acknowledged that there is evidence of irregularity in Plaintiff's course of medical treatment when it recognized the import of Dr. Johnson's evaluation. *Id.* at 9

¹⁷ Plaintiff notes that no such caveat was applied to Plaintiff's irregularly conducted separation physical, despite that examination also not being for treatment purposes; to the contrary, the Board found *that* examination "to be persuasive evidence of [Plaintiff's] medical fitness at the time of [his] discharge." Board Decision, Ex. A at 17.

n.22. In one of its very few accurate conclusions, the Board recognized the most likely reason for the irregularity in Plaintiff's medical records: Plaintiff desired to return to operational duty, even if he would never be fit to do so. *See* Board Decision, Ex. A at 17 ("Dr. Blumenfield quoted you as stating your belief that 'if you are a Marine in the infantry you do not ask for a medical retirement.' Your words and actions are those of a Marine who desired to be found fit for duty . . ."). Regardless of the reason for the inconsistencies in Plaintiff's medical record, the apparent irregularity itself destroys—and even *reverses* the effect of—the presumption of regularity. *See United States v. Roses Inc.*, 706 F.2d 1563, 1567 (Fed. Cir. 1983) ("[H]ere the presumption operates in reverse. If it appears irregular, it is irregular, and the burden shifts to the proponent to show the contrary.").

E. The Board Failed To Apply The Liberal Consideration Standard Required By Statute And Department Of Defense Policy

101. As is apparent from, *inter alia*, the Board's misapplication of the presumption of regularity and its reliance on inapposite evidence like Plaintiff's FMTB-E FITREPs, the Board also failed to apply the liberal consideration standard of review mandated by both statute and Department of Defense ("DoD") policy. *See* 10 U.S.C. § 1552 (h); Kurta Memo.

102. Plaintiff requested the Board to change the Narrative Reason for Separation on his April 1, 2013, DD Form 214 from "Force Shaping-VSP" to placement on the Permanent Disability Retirement List for PTSD and TBI. AR 11.

103. The Kurta Memo requires the Board to give "liberal consideration" to "veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment." Kurta Memo, Attach. 1. Unlike a prior memo by former Secretary of Defense Hagel that was focused on petitions seeking an upgraded characterization of service, "the Kurta Memo's

guidance is not limited to discharge characterization upgrades and applies to ‘any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from General to Honorable characterizations.’” *Doyon*, 58 F.4th at 1238 (internal citation omitted) (applying Kurta Memo to servicemember who received Honorable discharge but sought to correct narrative reason to indicate PTSD and, ultimately, medical retirement).

104. The Kurta Memo dictates that “the ‘veteran’s testimony alone’ may establish the existence of PTSD, and a service-connection determination by the VA is ‘persuasive evidence’ that PTSD existed during military service.” *Id.* at 1238–39 (quoting the Kurta Memo). The Kurta Memo’s guidance is binding on the Board, but it was neither referenced nor followed. *Doyon*, 58 F.4th at 1239 (“There is no dispute that the Hagel and Kurta Memos’ guidance is binding on the BCNR.” (citing *Fisher v. United States*, 402 F.3d 1167, 1177 (Fed. Cir. 2005))). To the contrary, the Board entirely dismissed Plaintiff’s testimony and treated Dr. Vogel’s examinations and the related VA determination as unpersuasive. As in the *Doyon* case, the Board “legally erred by reviewing the merits of [Plaintiff’s] application without giving it liberal consideration.” 58 F.4th at 1244.

105. Statutory law similarly required the Board to afford Plaintiff liberal consideration. Where a servicemember files a “claim under this section for review of a discharge or dismissal [] based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale . . . and whose [PTSD] or [TBI] is related to combat,” the servicemember is entitled to liberal consideration of his application. 10 U.S.C. 1552(h) (Board must “review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant’s discharge or dismissal.”).

106. Plaintiff was a member of the armed forces and his petition requested correction of his discharge to reflect a medical retirement, “based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale.” *Id.* The Federal Circuit has explained that § 1552(h) applies to requests for review of an Honorable discharge that include a requested correction to reflect medical retirement. *Doyon*, 58 F.4th at 1245–48.

107. “The BCNR was obligated to ‘apply the law in effect at the time it render[ed] its decision.’” *Id.* at 1245 (quoting *Bradley v. Sch. Bd. of City of Richmond*, 416 U.S. 696, 711 (1974)). But the Board failed to provide the liberal consideration mandated by 10 U.S.C. § 1552(h), or even to refer to the statute. The Board legally erred by failing to apply the statutorily required liberal consideration standard to its review of Plaintiff’s application.

F. The Board Based Its Decision On Factual Conclusions Based On Unsupported Speculation, Falsehoods, And Blatant Inconsistencies

108. The Board’s decision is unsupported by substantial evidence because it is fatally marred by a pattern of inconsistencies and unsupported speculation.

109. The Board offered no support for its conclusion that “the default status for Marines most of the time” is a “garrison environment,” Board Decision, Ex. A at 15, nor did the Board even attempt to justify completely ignoring the core duties of infantry Marines: preparing for and performing in combat.

110. The Board implicitly reduced the duties of an Infantry Unit Leader to *training* any military personnel, without consideration of who Plaintiff, as an Infantry Unit Leader, must train or what he must train them *to do*, nor for how Plaintiff, given his unfitting conditions, could possibly *lead* Marines in combat training missions—let alone actual combat. *Id.* at 15–16 (“If you were capable of successfully training inexperienced Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills, and abilities necessary to serve with and

support Marine Corps units, you were certainly capable of doing the same for actual Marines.”). The Board offered no support whatsoever for reducing an Infantry Unit Leader’s duties to mere training of non-combatant Navy Medical Department personnel and Religious Program personnel, despite Marine Corps regulations directly to the contrary.

111. Even if an Infantry Unit Leader’s duties could be reduced to “training,” rather than, as the MOS Manual states, “training, **deployment, and tactical employment** of rifle, weapons, [Light Armored Reconnaissance], and antitank platoons/companies and infantry,” MOS Manual § 3110, ¶ 16(a) (emphasis added), the Board offered no support for its conclusion that training noncombatants for deployment was equivalent to training infantry Marines for combat. Chaplains and Corpsman don’t kick down doors or “locate, close with and destroy the enemy” by fire and maneuver,” MOS Manual § 3110, ¶ 1; infantry Marines do.

112. The Board speculated, without support, that Plaintiff’s billet at FMTB-E was an Infantry Unit Leader billet. This is false. Plaintiff presented evidence in the form of numerous documents reflecting Billet MOS listings outside of the infantry community; the Board speculated, without evidence, that the numerous documents were merely a series of identical typos.

113. Sometimes the Board simply misread documents, and then used its mistakes to ignore relevant evidence. For example, after recognizing that Plaintiff’s neuropsychological examination with Dr. Johnson was evidence that could have led to Plaintiff being referred to the DES, the Board dismissed this evidence based on a cursory medical examination a week later that was scheduled expressly “to get off LIMDU.” AR 178. The Board misunderstood the outcome of this evaluation, believing incorrectly that it resulted in Plaintiff being returned to normal duty status. Board Decision, Ex. A at 9 n.22. This is false; the evaluator kept Plaintiff on LIMDU for at least two more months (until after he had transferred to FMTB-E), pending further follow-up

evaluation by a neurologist. AR 179. However, the Board applied its own misunderstanding of the outcome of that cursory examination to rebut the medical evidence of substantial impairment found during the “6-hour evaluation with neuropsychologist Dr. Johnson.” AR 185.

114. Where the Board bothered to justify its factual conclusions, it routinely contradicted itself. For example, Plaintiff presented evidence that he participated in VSP because both he and his superiors knew he could not return to operational duty. Where the Board wished to blame Plaintiff for his discharge, however, it ignored the evidence that Plaintiff felt compelled to take VSP as his only viable option and declared: “Your Marine Corps career ended because you elected to participate in the VSP program, and not based upon any limitations imposed by your medical conditions.” Board Decision, Ex. A at 12. Elsewhere, when it was convenient to conclude that Plaintiff would have remained on active duty if he could have, the Board emphasized Plaintiff’s proactive effort to become fit for operational duty and clear desire to continue serving as an infantry Marine. *Id.* at 17.

115. The Board speculated, without support, that Plaintiff’s performance at FMTB-E was compelling evidence of his fitness to perform the duties of an Infantry Unit Leader, and that the shore tour billet training noncombatants was a good fit for a Marine with Plaintiff’s rating. Elsewhere, the Board acknowledged that Plaintiff was likely assigned to his role at FMTB-E “to provide [Plaintiff] the well-deserve[d] opportunity to ‘take a knee’ after [his] multiple combat deployments.” *Id.* at 12. The Board offered no explanation for how performance in a “take a knee” shore billet¹⁸ corresponded to the far more rigorous world of infantry Marines; rather, the

¹⁸ Incidentally, Plaintiff provided evidence that this conclusion is correct, and was an intentional choice on the part of his superiors; he was assigned to FMTB-E because the duties he was expected to perform there were far less rigorous than what was expected in a typical infantry billet.

Board merely switched back to treating FMTB-E as effectively the same environment (without any evidence to support such treatment).

116. Some of the Board's inconsistencies are simply insulting. The Board at one point offered the polite platitude that it did not doubt the severity of Plaintiff's disabilities or Dr. Vogel's ability to accurately evaluate Plaintiff's health, and conceded that the nature and severity of Plaintiff's symptoms was uncontested. *See id.* at 11 ("Again, the Board did not doubt Dr. Vogel's credentials, and certainly does not question the current severity of your conditions or that you deserve the disability compensation that you currently receive for your injuries suffered in service to the nation."). Later, however, to excuse away its refusal to apply the presumption of regularity to Dr. Vogel's analysis, the Board baselessly and cruelly implies that Plaintiff exaggerated his symptoms for profit. *See id.* at 18 ("As the only time you ever reported such severity in your symptoms was in your effort to obtain the highest possible disability rating for compensation purposes . . . the Board could not help but doubt that your conditions were actually as severe at the time as you now claim them to be."). Not only is the Board's statement insulting, it is flat out false. Plaintiff reported similar severity in his symptoms to Dr. Johnson over two years earlier. AR 178.

117. The Board's inconsistent and unsupportable factual conclusions contributed to a determination that was unsupported by substantial evidence.

G. The Board Failed To Consider Crucial Aspects of Plaintiff's Application

118. Even after this Court remanded the Board's prior decision, and Plaintiff explained in detail what the Board had failed to do in its prior decision, the Board still failed to address crucial aspects of Plaintiff's application.

119. The Board ignored the evidence of severe disability reflected in Plaintiff's 70% disability rating for PTSD and independent 70% disability rating for TBI issued by the VA.

Indeed, at no point in its decision does the Board even acknowledge the severity of disability reflected in Plaintiff's VA ratings; there is no acknowledgment of either 70% disability rating, nor is there any effort to reconcile how the VA could conclude, based on Dr. Vogel's evaluations, that Plaintiff was so severely disabled, yet the Board could conclude that he was fit for continued service. We do know that the Board "did not question the existence of either [Plaintiff's] TBI or PTSD conditions during the time period in question," and that the Board "certainly does not question the current severity of [Plaintiff's] conditions or that [Plaintiff] deserve[s] the disability compensation that [he] currently receive[s] for [his] injuries suffered in service to the nation." *Id.* at 4, 11. In other words, the Board does not doubt the validity of Plaintiff's disability ratings, or the severity of disability that they reflect. The Board simply refuses to even attempt to reconcile the VA's understanding of the severity of Plaintiff's symptoms with its own.

120. This Court has clearly established that VA disability ratings are relevant evidence that must be considered in determining unfitness for duty. *Valles-Prieto*, 159 Fed. Cl. at 618 (citing *Heisig*, 719 F.2d at 1157). Nonetheless, the Board casually brushed these ratings aside as mere "service-connection determinations [] unrelated to fitness determinations." Board Decision, Ex. A at 2.

121. The Board failed to acknowledge, much less consider, Plaintiff's extensive history of treatment for symptoms of TBI and PTSD. The Board referenced, but refused to connect, Plaintiff's extensive history of treatment for nausea and vertigo, and resulting negative impacts on his performance, to his TBI, despite such a connection being apparent from Plaintiff's medical record. The Board did not even acknowledge Plaintiff's extensive history of treatment for major depression, or the connection between major depression and Plaintiff's rated disabilities (particularly PTSD). By ignoring treatment for the symptoms of TBI and PTSD, the Board

minimized the impact Plaintiff's TBI and PTSD had on his life and on his ability to perform the duties of his office, grade, rank, or rating.

122. Perhaps most egregious, given that it was the primary basis for remand, the Board failed once again to meaningfully engage with the duties required of Plaintiff's office, grade, rank, or rating. The Board did not address the duties of leadership required from a Marine at the grade of E-6, despite Plaintiff explaining how his disabilities rendered him unfit to lead. Suppl. Memo., Ex. B at 11. The Board did not address the operational and combat duties of an infantry Marine; instead, as explained above, the Board implicitly conceded that Plaintiff was unfit for such operational duties and attempted to substitute an invented, lesser standard of duties of an Infantry Unit Leader *in a garrison environment*. The Board is not at liberty to substitute such a standard, and an Infantry Unit Leader is not merely a garrison Marine. An Infantry Unit Leader "could reasonably be expected" to engage an enemy in combat and to have to operate outside of the garrison environment, and the Board did not address any such duties whatsoever. *See Nyan I*, 153 Fed. Cl. at 243 (internal citations omitted).

123. These failures to consider crucial aspects of Plaintiff's application also rendered the Board's decision arbitrary, capricious, contrary to law, and unsupported by substantial evidence.

124. The Board's decision therefore deprived Plaintiff of the retirement pay and medical benefits to which he is entitled under 10 U.S.C. § 1201.

COUNT I

125. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as if set forth in their entirety herein.

126. Plaintiff has exhausted his administrative remedies with the Navy.

127. Title 10 U.S.C. § 1201 confers a substantive right to monetary benefits against the United States by specifying the disability retirement pay and benefits to which a qualified servicemember is entitled thereunder.

128. Plaintiff carried his burden to demonstrate an error and injustice by showing that, at the time of his discharge, he was unfit for service because of unfitting conditions of TBI and PTSD. Plaintiff was unfit to perform the duties of his office, grade, rank, or rating, and he should have been referred to the DES process and, ultimately, medically retired from the Marine Corps.

129. By finding Plaintiff's TBI and PTSD not to be unfitting conditions without applying the proper legal standard under DoDI 1332.38, and without assessing crucial evidence, the Board's May 2023 decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law. Specifically, the Board's decision was arbitrary, capricious, unsupported by substantial evidence, and contrary to law because:

- a. It expressly rejected application of controlling authority, including the regulations that dictate how medical fitness determinations should be made—DoDI 1332.38 and SECNAVINST 1850.4E—and precedential decisions of this Court.
- b. It applied incorrect standards of review, misapplied burdens of action and proof, and created a “garrison environment” standard that runs contrary to controlling regulations and severely diminishes the scope of a servicemember's duties that must be considered in a fitness determination.
- c. It relied on inapposite evidence, most fallaciously Plaintiff's FITREPs from a billet that was outside his rate and to which he had been assigned specifically

because it was anticipated that it would require less of him than the duties of his office, grade, rank, or rating.

- d. It misapplied the presumption of regularity, both in that it applied the presumption far too strongly to evidence that supported its conclusions and in that it refused to apply the presumption to the extensive evidence that ran counter to its conclusion.
- e. It failed to apply liberal consideration to Plaintiff's petition.
- f. It based its decision on unsupported speculation, inaccurate factual conclusions, and blatant factual contradictions.
- g. It failed to consider crucial aspects of Plaintiff's application, including the duties of his office, grade, rank, or rating.

130. As a direct result of the unlawful decision of the Board, Plaintiff has been, and continues to be, deprived of the disability retirement pay and medical benefits to which he is entitled under 10 U.S.C. § 1201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff William Olas Bee prays that this Court enter judgment against Defendant and grant the following relief:

- a. Order that Plaintiff's military records be corrected to reflect the medical retirement to which he is entitled;
- b. Award Plaintiff money and other benefits in nature and in an amount to be determined at trial;
- c. Award Plaintiff interest, costs, and attorneys' fees; and
- d. Grant any such other and further relief as the Court deems just and proper.

Dated: July 7, 2023

Respectfully submitted,

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EXHIBIT C



HEALTH AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-1200

OCT 14 2005

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (M&RA)
ASSISTANT SECRETARY OF THE NAVY (M&RA)
ASSISTANT SECRETARY OF THE AIR FORCE (M&RA)
DIRECTOR OF HEALTH AND SAFETY, USCG

SUBJECT: Policy Guidance for Separation Physical Examinations

Section 706 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 amended section 1145(a) of Title 10, United States Code to require that members of the armed forces who are scheduled to be separated from active duty as described in paragraph (2) of section 1145(a), undergo a physical examination immediately before separation. This requirement may only be waived if the member has undergone a physical examination within 12 months before separation, and then only with consent of the member and concurrence of the unit commander.

The continued good health of our Service members is of paramount importance, and we must ensure those who separate from active duty have their health status thoroughly reviewed and documented. For many Service members separating from active duty, especially members of the Reserve Components, the demobilization out-processing center is the last opportunity to provide closure to their medical records.

For purposes of this statute, the separation physical examination is an individual health assessment sufficient to evaluate the health of members at the time of separation, determine whether any existing medical condition was incurred during active duty service, provide baseline information for future care, complete a member's military medical record, and provide a final opportunity to document prior to separation any health concerns, exposures, or risk factors associated with active duty service.

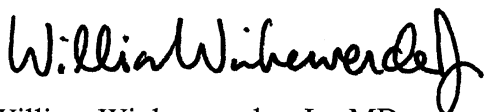
Routine general physical examinations for persons without symptoms or known risk factors have never been proven to extend life or decrease illness or discomfort. A more systematic way to improve health and ensure quality of care is through periodic clinical preventive services. The Armed Forces Epidemiology Board strongly recommended replacing routine physical examinations with such an approach and endorsed the U.S. Preventive Service Task Force (USPSTF) guidelines as an authoritative source of appropriate clinical preventive service recommendations (<http://www.ha.osd.mil/afeb/2003/2003-16.pdf>).

Department of Defense separation physical examinations will be individually tailored and, at a minimum, will include a face-to-face interview with a health care provider, a review of the individual medical history and medical record, a focused,

age- and gender-specific physical examination consistent with the USPSTF recommendations (<http://www.ahrq.gov/>), any indicated specialty consultations, appropriate laboratory or imaging procedures, and review of the self-assessment of individual health, including DD Form 2697, Report of Medical Assessment, and, if appropriate, DD Form 2796, Post-Deployment Health Assessment.

Finally, an assessment is made regarding a member's worldwide qualification for retention (according to Service guidelines) or need for a referral to a Medical Evaluation Board and documentation of any health conditions not previously documented. The completed documentation is then placed in the Service member's permanent medical record.

Compliance with this statutory requirement is a priority and will require a concerted effort by military treatment facilities and commands and commanders at all levels. How well the Military Health System serves its members is more than just a measure of the care they receive while on active duty. It is also the fulfillment of our obligation to ensure they are returned to civilian life in the best health possible, that they are compensated for any disability, and any care received or injury incurred is documented.



William Winkenwerder, Jr., MD

cc:

Surgeon General, Army
Surgeon General, Navy
Surgeon General, Air Force

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendants.

Case No. 21-1970
(Senior Judge Loren A. Smith)

**PLAINTIFF WILLIAM OLAS BEE'S MOTION FOR JUDGMENT ON THE
ADMINISTRATIVE RECORD**

Dated: September 20, 2023

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TABLE OF ABBREVIATIONS

Abbreviation	Full Name
BUMEDINST	Bureau of Medicine Instruction
DES	Disability Evaluation System
DODI	Department of Defense Instruction
FITREP	Fitness Report
GAF	Global Assessment of Functioning
IED	Improvised Explosive Device
Infantry T&R Manual	Infantry Training and Readiness Manual
LIMDU	Limited Duty
MARADMIN	Marine Administrative Message
MCO	Marine Corps Order
MOS	Military Occupational Specialty
MOS Manual	Marine Corps Order 1200.17
NAM	Navy and Marine Corps Achievement Medal
NAVMC	Navy and Marine Corps
PEB	Physical Evaluation Board
PMOS	Primary Military Occupational Specialty
PTSD	Post-traumatic stress disorder
RCFC	Rules of the United States Court of Federal Claims
SECNAVINST	Secretary of the Navy Instruction
TBI	Traumatic brain injury
VA	Veterans Administration
VSP	Voluntary Separation Program

PRELIMINARY STATEMENT

Plaintiff William Olas Bee respectfully requests that this Court grant him judgment on the administrative record pursuant to Rule 52.1 of the Rules of the United States Court of Federal Claims (“RCFS”). Following remand by this Court, Mr. Bee again petitioned the Board for Correction of Naval Records (the “Board”) to correct his Naval record to reflect the status that he should have received when he was discharged—disability retirement. The Board again denied Mr. Bee’s petition, and now he requests this Court find that the Board’s decision was arbitrary, capricious, contrary to law, and unsupported by substantial evidence and order the Board to correct his record.

Mr. Bee is a Purple Heart-decorated, Honorably Discharged United States Marine. He was an infantry Marine, who initially served as a Rifleman but, by the time of his separation, held the more advanced rate of Infantry Unit Leader and had achieved the rank of Staff Sergeant, grade E-6. As an infantry Marine, Mr. Bee served four combat deployments to Afghanistan between 2001 and 2010. AR 60, 82.

During his fourth and final deployment, Mr. Bee suffered head injuries that caused debilitating traumatic brain injury (“TBI”) and post-traumatic stress disorder (“PTSD”) when he and his squad came “under heavy fire while in a compound in which the enemy had planted [two] well-hidden” improvised explosive devices (“IED”). AR 61. When the IEDs exploded, two of the Marines under Mr. Bee’s command were killed, his eardrums were blown out, and he was rendered unconscious. *Id.* His next memory was waking up in a CT scanner. Shortly thereafter, he learned the traumatic news that his entire surviving squad was in the ICU—and that the remains of the two men killed had initially been kept in a trash can. *Id.* Mr. Bee’s debilitating TBI and PTSD were unfitting at the time of his discharge and persist to this day.

After being returned to the United States for further medical treatment, Mr. Bee spent

months on limited duty (“LIMDU”) and was transferred to a nonoperational billet with the Navy outside his Marine Corps Infantry Unit Leader rating, where he remained for the rest of his military service. Mr. Bee understood that his disabilities would not permit him to return to operational duty as an infantry Marine, so he voluntarily separated from the Marine Corps in April 2013. Based on medical examinations prior to his separation from the Marine Corps, the Department of Veterans Affairs (“VA”) determined that Mr. Bee was 70% disabled by TBI and, separately, 70% disabled by PTSD, AR 104; yet, Mr. Bee was never provided the protections of a Disability Evaluation System (“DES”) evaluation—an evaluation to which he was entitled.

After struggling with his disabilities for eight years, Mr. Bee came to realize that the Marine Corps had mishandled his case by failing to refer him to the DES for evaluation for disability retirement, so he applied to the Board for a correction of his records to reflect disability retirement for his unfitting TBI and PTSD with a combined disability rating of at least 30%. The Board denied that initial application, and this lawsuit followed. After a voluntary remand from this Court, the Board again denied Mr. Bee’s application for a correction of his records to reflect disability retirement.

The Board’s latest decision is unsound because the Board again failed to address “[t]he sole standard to be used in making determinations of physical disability as a basis for retirement or separation,” which “is unfitness to perform the duties of office, grade, rank or rating.” Secretary of the Navy Instruction (“SECNAVINST”) 1850.4E. Despite having a second opportunity on remand, the Board again failed to comment on the common military tasks required by Mr. Bee’s office, grade, rank, or rating or consider those requirements and duties in light of the nature and degree of Mr. Bee’s disabilities. Instead, the Board erroneously focused on inapposite Fitness Reports (“FITREPs”) from an out-of-rate billet and invoked an improper “garrison environment”

fitness standard untethered to the duties Mr. Bee was reasonably expected to perform as an Infantry Unit Leader. The Board also failed to apply the “liberal consideration” standard required by statute and controlling Department of Defense guidance.

The overwhelming weight of evidence demonstrates that Mr. Bee was not fit for continued service as an Infantry Unit Leader at the time of his discharge and was therefore entitled to disability retirement. For these and the reasons that follow, Plaintiff petitions this Court to grant judgment on the administrative record and instruct the Board to correct his Naval record.

STATEMENT OF THE ISSUES

Mr. Bee requests that this Court find the Board’s decision arbitrary, capricious, contrary to law, and unsupported by substantial evidence, grant him judgment on the administrative record, and direct the Navy to correct his Naval record to reflect a disability retirement or, alternatively, vacate the Board’s decision as arbitrary, capricious, contrary to law, and unsupported by substantial evidence and remand this case for reconsideration with direction, including because:

1. The Board failed to apply the sole standard of fitness in finding Mr. Bee fit for duty.
2. The Board again erroneously relied on inapposite fitness reports prepared by non-Marines that evaluated Mr. Bee’s performance in a non-combat role that did not reflect his ability to perform the duties of his “office, grade, rank, or rating.”
3. The Board misapplied the presumption of regularity.
4. The Board wrongfully relied on the very error Mr. Bee sought to correct in his record to justify dismissing probative evidence and denying his petition.
5. The Board rejected or ignored controlling legal authority and regulatory guidance, including failing to provide liberal consideration as required by statute (10 U.S.C. § 1552(h)) and binding Department of Defense guidance.
6. The Board relied on numerous critical factual errors, including about key details in

the timeline of events, and disregarded other facts and evidence that did not support its conclusions, including multiple medical reports and sworn declarations.

7. The Board once again failed to contend with or to make explicit findings regarding the duties of Mr. Bee's "office, grade, rank, or rating" of an Infantry Unit Leader at the grade of E-6, and reconcile the severity of Mr. Bee's injuries as indicated by his disability rating from the Department of Veterans Affairs with its conclusion as required by SECNAVINST 1850.4E, Department of Defense Instruction ("DODI") 1332.38, and controlling law, and instead applied an unsound "garrison environment" theory.

STATEMENT OF THE CASE

This is an action under 10 U.S.C. § 1201 for pay and benefits of disability retirement due to unfitting TBI and PTSD at the time of separation and correction of military records regarding Mr. Bee's separation from the U.S. Marine Corps to reflect disability retirement.

The Board is empowered "to correct an error or remove an injustice," which is precisely what Mr. Bee has requested. Mr. Bee demonstrated that he met all of the requirements for placement on the permanent disability retirement list, including that his disabilities rendered him unfit to perform the duties of his office, grade, rank, or rating at the time of his separation from the Marine Corps. However, despite the extensive evidence Mr. Bee presented that his conditions were incompatible with the duties of an infantry Marine, the Board erroneously "found insufficient evidence of any error or injustice in the failure of the Marine Corps to refer [Bee] to an MEB at any time after [his] evacuation from Afghanistan in June 2010." AR 474.

As relevant here, a member of the armed forces who "is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay" is to be granted a disability retirement, so long as: "(1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of

the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and (3) . . . (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by [VA] at the time of the determination; and either— . . . (ii) the disability is the proximate result of performing active duty; [or] (iii) the disability was incurred in line of duty in time of war or national emergency.” 10 U.S.C. § 1201.

All of these requirements—except Mr. Bee's fitness for duty—are undisputed. There is no dispute that Mr. Bee's disability is of a permanent and stable nature, nor that it was so at the time of his discharge.¹ The disability was not related to misconduct or neglect; rather, it resulted from Mr. Bee's heroic service during four combat deployments. The disabilities are *both* greater than 30 percent (70% for TBI; 70% for PTSD); the combined VA rating for these unfitting disabilities is 90%. Mr. Bee's disabilities were “the proximate result of performing active duty” and “incurred in line of duty in time of war or national emergency;” indeed, they were incurred in combat. 10 U.S.C. § 1201. The only factor the parties dispute is whether the disabilities rendered Mr. Bee *unfit* to perform the duties of his office, grade, rank, or rating at separation. If Mr. Bee's disabilities were unfitting, then it was an error for the Marine Corps to deny Mr. Bee disability retirement, and Mr. Bee suffered the injustice of being denied the benefits of medical retirement.

The Board's conclusion that Mr. Bee was not unfit at the time of separation is arbitrary, capricious, contrary to law, and not supported by substantial evidence. Mr. Bee is entitled to relief, and respectfully requests that this Court grant him judgment on the administrative record and order the Board to correct his record, including medical retirement, and any other appropriate relief.

¹ “[T]he Board . . . certainly does not question the *current severity* of your conditions or that you deserve the disability compensation that you currently receive for your injuries suffered in service to the nation.” AR 480 (emphasis added). Plaintiff's disability compensation and ratings were initially established based on an in-service examination; he remains 70% disabled by TBI and 70% disabled by PTSD to this day.

STATEMENT OF FACTS

I. THE MILITARY DISABILITY EVALUATION SYSTEM (“DES”)

The military uses the DES to process and discharge disabled service members. *See generally* 10 U.S.C. § 1201 *et seq.* This process is described in detail in prior filings. *See* Compl. at 4–7, ECF No. 1; First Mot. for J. on the Admin. R. at 6–8, ECF No. 20; Am. Compl. at 14–17, ECF No. 42. Below focuses on the standards applied during the DES process, which the Board—standing in the shoes of the Physical Evaluation Board (“PEB”) that should have been convened—must apply. *Kelly v. United States*, 157 Fed. Cl. 114, 119 (Fed. Cl. 2021) (“*Kelly I*”), *vacated on other grounds*, 69 F.4th 887 (Fed. Cir. 2023) (“*Kelly II*”).

The guiding regulation for implementing the DES across the Department of Defense at the time of Mr. Bee’s discharge was DODI 1332.38, which requires that a service member be found unfit if the evidence “establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating.” DODI 1332.38 encl. 3, § E3.P3.2.1. The instruction also guides the PEB to assess whether the “medical condition represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty” and whether the “medical condition imposes unreasonable requirements on the military to maintain or protect the member.” *Id.* § E3.P3.2.2. The Department of the Navy’s implementing instruction in force at the relevant time, SECNAVINST 1850.4E, similarly establishes that “[t]he sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay.” SECNAVINST 1850.4E, encl. 3, pt. 3, § 3301. The Navy instruction further elaborates that common military tasks, physical readiness/fitness tests, deployability, and loss of special qualifications should all be considered in determining whether a member can reasonably

perform his or her duties. *Id.* § 3304.

II. MR. BEE'S MILITARY HISTORY

A. Mr. Bee Enlists and Joins the Infantry Marines

In 1999, Mr. Bee enlisted in the Marine Corps when he was seventeen years old, and he entered active duty on June 20, 2000. AR 50. After completing his Marine recruit training, Mr. Bee joined the infantry community, and was assigned the Primary Military Occupational Specialty (“PMOS”)—or “rate”—of Rifleman, identified by Military Occupational Specialty (“MOS”) number 0311. *Id.* Later in his career, as he achieved greater rank, Mr. Bee attained the rate of Infantry Unit Leader, PMOS 0369, which was his PMOS at the time of his separation from the Marine Corps. AR 50, 84, 309.

1. Duties Required by Mr. Bee's Rating as a Rifleman

The Marine Corps MOS Manual—the Marine Corps regulation that defines the “Marine Corps Occupational System”—specifies that Riflemen are “[n]aval oriented expeditionary warriors of final resort providing maximum versatility in chaotic and uncertain conditions of crisis and conflict” who “employ[] a variety of weapons” and are “capable of the full spectrum of combat, day or night, against opposing forces with a full spectrum of capabilities” Marine Corps Order (“MCO”) 1200.17 (“MOS Manual”) § 3110, ¶ 1. “[R]iflemen employ the M16A2 service rifle, the M203 grenade launcher and the squad automatic weapon” in order to serve as “primary scouts, assault troops, and close combat forces.” *Id.* § 3110, ¶ 2.

As a Rifleman, Mr. Bee, during his third deployment, led his Marines to destroy a bomb-making facility and a cache of drugs, while protecting them from hidden dangers. The following excerpt from the Summary of Action in Mr. Bee's recommendation for his Navy and Marine Corps Achievement Medal (“NAM”) with combat distinguishing device and V for valor exemplifies what is expected of an infantry Marine:

On 29 April 2008, after securing the southern portion of the perimeter during the heli-borne insertion of the company into its landing zone in the Helmand Province, Sergeant Bee began leading his squad south on its dismounted movement into its final area of operations. During this movement south, his squad was responsible for locating and destroying an improvised explosive device making facility and large quantity of drugs placed upon a concealed reverse pressure-plate style booby trap during the clearance of its assigned buildings. His ability to identify and locate the improvised explosive device cell was a testament to his attention to detail. The cell could have been overlooked if not for his insistence that sensitive sight exploitation be conducted during each clearance operation.

AR 411. Without Mr. Bee's attention to detail and focus on his surroundings, his fellow Marines could have been killed by the booby-trapped drug cache.

2. Duties Required By Mr. Bee's Rating as an Infantry Unit Leader

The Marine Corps MOS Manual states that an Infantry Unit Leader "assists commanders and operations officers in the training, deployment and tactical employment of rifle, weapons, [Light Armored Reconnaissance], and antitank platoons/companies and infantry" and is "proficient in all the infantry weapons systems." MOS Manual § 3110, ¶ 16(a). An Infantry Unit Leader also supervises and coordinates "the establishment and operation of unit command posts, the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort." *Id.* The Marine Corps Infantry Training and Readiness Manual lists the "Billet Descriptions" and "Core Capabilities" of an Infantry Unit Leader. Navy and Marine Corps ("NAVMC") 3500.44, Infantry Training and Readiness Manual ("Infantry T&R Manual") at 9-13 to 9-26. These capabilities include "control[ing] the fire and maneuver of his assigned section," "repel[ing] the enemy assault by fire and close combat," "[e]ngag[ing] targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade," "request[ing] close air support," and "navigat[ing] to designated points using a topographic map, lensatic compass, protractor, and global positioning equipment while dismounted and mounted," among other requirements. *Id.* at 9-13 to 9-17.

3. Duties Required of All Marines

Additionally, all Marines require continued proficiency in the aforementioned Rifleman infantry combat skills, regardless of their PMOS. This is because of the principle that “Every Marine is a Rifleman,” a “narrative that defines the culture and identity of the Marine Corps.” Marine Administrative Message (“MARADMIN”) 774/20, ¶ 3, 5. The “Every Marine a Rifleman” principle means that, regardless of whether a Marine’s rating is Clerk, Analyst, or Mechanic, every Marine is expected to remain capable of serving as provisional infantry. *See* MOS Manual § 3110, ¶ 1; Infantry T&R Manual at 11-6 to 11-7 (listing an index of individual training events required of Marines with MOS 0311, Rifleman). This combat readiness requirement is why the Marine Corps is unique among the armed services in that *it has no non-combatants among its members. See generally* MOS Manual. Unlike the other military services, there are no chaplains, medics, corpsmen, doctors, or nurses in the Marine Corps. *Id.* This is part of why all Marines—with very few exceptions—are expected to be deployable; under normal circumstances, no Marine’s duties are limited to non-combat roles in a “garrison environment.”

B. Mr. Bee Deploys to Afghanistan Again and Suffers a Serious Head Injury, Later Diagnosed as “Potential TBI,” During a Firefight

Mr. Bee deployed to Afghanistan from March 2008 to October 2008. AR 311. He once again distinguished himself as an exemplary infantry Marine. As explained in his NAM write-up:

During the clearance his squad received an RPG followed by small arms fire. Unable to identify the enemy’s position, Sergeant Bee moved into a position where he could gather the proper fire mission information. Selflessly exposing himself to enemy small arms fire that was impacting all around him, he quickly used his compass to get a direction then took cover. After ranging the distance he passed the information to the platoon’s scout who then called in an artillery mission on the enemy strongpoint. The suppression he provided ceased the enemy fire and allowed a Weapons Company mobile assault platoon to move in a position to better engage the enemy with their heavy machine guns. Following the initial indirect fires, he called for the scout to repeat the mission so he could retrograde his squad back to the platoon position under the cover of both direct assets from the mobile assault platoon and artillery fire. His squad’s successful feint allowed for the

disruption of the enemy's defensive lines as well as diverting the enemy's attention from the seizure of buildings the company would use to stage its night infiltration across the canal.

AR 411. Unfortunately, Mr. Bee also suffered his first combat-induced TBI.

On May 18, 2008, just after Mr. Bee had completed a four-hour rotation as Sergeant of the Guard, he was washing his laundry by hand when he heard a gunshot. AR 57, 67. With no time to don protective body armor or his helmet, Mr. Bee took up his rifle and responded. When he aimed his rifle over a stone wall, an enemy sniper's shot struck the wall, dislodging a rock that struck Mr. Bee in the head, knocking him unconscious. *See* AR 67. The scene was captured by a photographer embedded with Mr. Bee's unit. *See* AR 20–21. On January 23, 2009, a post-deployment health reassessment diagnosed Mr. Bee with a “[p]otential TBI with persistent symptoms” caused by this incident, based on his responses to questions regarding recent incidences of “memory problems,” “balance problems or dizziness,” “ringing in the ears,” “sensitivity to bright light,” “irritability,” “headaches,” and “sleep problems.” AR 78–79. The reassessment also noted a minor concern regarding PTSD. AR 80.

C. Mr. Bee's Final Deployment Ends in Severe Traumatic Brain Injury

Despite the TBI and PTSD symptoms noted after his 2008 deployment, Mr. Bee deployed to Afghanistan from December 2009 until June 2010. AR 311. It was his most difficult deployment and contributed painfully to the TBI and PTSD that would afflict Mr. Bee for the rest of his life. Mr. Bee earned another NAM with combat distinguishing device and “V” for valor; according to the write up, Mr. Bee's courage under enemy fire and situational awareness allowed him to lead his own squad through an intense firefight, while also protecting another squad that had come under enemy fire:

On 17 January 2010, Sergeant Bee led his squad on a security patrol in the NadAli District, Afghanistan. As his squad moved west into the city, they received fire from multiple enemy positions. Continuing to push the fight to the enemy he

aggressively maneuvered his squad from building to building clearing each position. As his squad neared the limit of advance, Sergeant Bee observed enemy fire impacting in close proximity of First Squad, First Platoon patrolling to the south across an impassible canal. Immediately he ordered his squad to occupy an advantageous position in order to locate the origin of enemy fire. Once in position he observed a Rocket Propelled Grenade Team that was oriented towards First Squad, First Platoon. Sergeant Bee immediately ordered suppressive fires on the RPG Team while he maneuvered to fire an AT-4 on the position. Arriving to a suitable firing position he attempted to fire the rocket; when it misfired he immediately went through the misfire procedures. As he prepared the rocket for the second shot the enemy oriented their fire on his position; remaining calm he fired the rocket, neutralizing the enemy position. Following the rocket shot, his squad was pinned down as they were fired upon by three separate enemy positions. Sergeant Bee remained calm under intense fire and requested a show of force from a rotor section; this ceased the enemy fire and allowed his squad to safely egress. Sergeant Bees aggressive decision making, tactical ability and calmness under fire prevented the enemy from inflicting friendly casualties and led to one low level Taliban Commander killed in action and three enemy wounded.

AR 415. If Mr. Bee had been less aware of First Squad, First Platoon's peril, or had been unable to keep his cool under fire, Marines from both squads would likely have been killed that day. As explained in his FITREP for that period: "During combat operations [Bee] has shown himself to be a bold and courageous leader of Infantrymen, his aggressive demeanor during the most adverse situations has truly saved and inspired the Marines in his charge." AR 377.

During this deployment, a "good friend" of his was "shot in the head" and died in his arms.

AR 61. In another incident, a fellow Marine was shot and nearly died; Mr. Bee worked to save his life and get him to medical evacuation. *Id.* Mr. Bee learned later that, despite his efforts, the Marine died in the helicopter en route to the hospital. *Id.* These traumatic experiences all contributed to Mr. Bee's PTSD.

The most damaging incident occurred on June 8, 2010, just two days before Mr. Bee's deployment was scheduled to end. While in Marjah, Afghanistan, Mr. Bee's squad came "under heavy fire while in a compound in which the enemy had planted [two] well-hidden IED's," which the enemy remotely detonated. AR 61. The explosions collapsed the building, blew Mr. Bee off

of his feet, blew out both his eardrums, and knocked him unconscious for an extended period. Two Marines under Mr. Bee's command died instantly, and the entire surviving squad ended up in the intensive care unit at Camp Dwyer. *Id.*; AR 116. The next memory Mr. Bee had was waking in a CT scanner. AR 116. The trauma was made worse when Mr. Bee later learned that the remains of the two Marines killed by the explosion were initially stored in garbage cans, due to a lack of better options in the area. AR 61. Mr. Bee was awarded the Purple Heart Medal for the wounds he received in action that day. AR 20, 418–19.

Due to the severity of his wounds, Mr. Bee was medically evacuated from Afghanistan to Germany. AR 60, 116. On June 16, 2010, while still overseas, Mr. Bee had a positive TBI screening. AR 116–17. Mr. Bee was referred to physical and occupational therapy, and informed he needed to schedule follow-up appointments with a neurologist stateside to address symptoms of ataxic gait, short term memory loss, and decreased concentration. *Id.* Mr. Bee was also diagnosed with PTSD on June 28, 2010, shortly after his return to the United States. AR 68, 178.

D. Mr. Bee's Return to the United States and History of Treatment

When Mr. Bee returned to Camp Lejeune, North Carolina, he was promptly placed on Limited Duty (“LIMDU”) status from June 21, 2010 through December 20, 2010 due to his TBI symptoms. AR 7, 81, 179, 1331, 1415. Pursuant to a referral from the Camp Lejeune TBI Clinic, Mr. Bee received comprehensive evaluations in July and September of 2010 from Dr. Karen Johnson of Carolina Health Services. AR 60, 68, 178.

Dr. Johnson's evaluation included both clinical interviews and testing, *id.*, and diagnosed Mr. Bee with cognitive disorder, chronic moderate PTSD, and a Global Assessment of Functioning (“GAF”) score of 40–45.² Dr. Johnson expressed “[c]oncern regarding [Bee's] future.” AR 178.

² A GAF score of 40–45 indicates “[s]erious symptoms (e.g. suicidal ideation . . .) OR any serious

While still on LIMDU, Mr. Bee was promoted to Staff Sergeant (E-6) and the more advanced rating of Infantry Unit Leader (MOS 0369). AR 7, 1307, 1312. Despite this advancement in grade, rank, and rating, Mr. Bee was assigned the low-stress task of overseeing the battalion's urinalysis testing program. AR 383. In November 2010, Mr. Bee was transferred to a non-operational billet as a "Military Instructor" for Navy medical and religious personnel at the Navy's FMTB-E. Mr. Bee's assignment at FMTB-E was far less demanding than an operational infantry billet and limited to training Navy medical and religious program personnel in the "knowledge, skills, and abilities necessary to serve with and support the Marine Corps." AR 385, 387, 392, 397. Even the Board recognized that duty at FMTB-E likely represented a "well-deserve[d] opportunity to 'take a knee' after [Plaintiff's] multiple combat deployments." AR 481.

During his time at FMTB-E, Mr. Bee continued to struggle with the symptoms of his PTSD and TBI. His TBI caused bouts of nausea, vomiting, and abdominal pain that required colleagues to step in for him and take over his classes. AR 26. His behavior was erratic, and superiors warned him about "overly harsh discipline of trainees under [his] supervision." *Id.* One supervisor went so far as to warn Mr. Bee's spouse that she needed to take precautions, such as hiding knives and weapons and sleeping with her son separately from Mr. Bee "in a locked bedroom" to avoid the possibility of Mr. Bee engaging in violence. AR 23. From 2010 to 2013 Mr. Bee was continuously treated for symptoms of TBI and PTSD, including depression, nightmares, anxiety, nausea, vomiting, and vertigo. Am. Compl., ECF No. 42 at 21–22 (detailing treatment).

E. Mr. Bee Realizes He Cannot Serve as an Infantry Marine, Accepts VSP, and Undergoes VA and Separation Physicals

As Mr. Bee neared the end of his enlistment in 2013, he faced a difficult decision. He

impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job)." AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STAT. MANUAL OF MENTAL DISORDERS (4th ed. 2000).

continued to suffer TBI symptoms, including vertigo, disorientation, nausea, and cognitive impairment, and PTSD symptoms including anxiety, depression, chronic fatigue, migraines, and insomnia. Mr. Bee could not reasonably hope to return to an operational infantry Marine billet, and could not hope to promote as an Infantry Unit Leader while in non-operational, out-of-rate billets like his position at FMTB-E. So Mr. Bee applied for the Voluntary Separation Program (“VSP”). AR 50. Mr. Bee’s End of Active Service date was only moved up by two months, from June 2013 to April 2013, but it spared him the indignity of being removed from the Marine Corps involuntarily—the inevitable alternative under the Marine Corps’ “up-or-out” system that results in a Marine being involuntarily discharged after twice failing to promote. But Mr. Bee should never have been eligible for VSP in the first place; by law and regulation, Mr. Bee’s command should have referred him to DES instead.

As part of the separation process, in January 2013 (three months before his April 2013 discharge) Mr. Bee underwent thorough examinations for both PTSD and TBI by Dr. Roy Vogel, Ph.D., at Camp Lejeune, North Carolina. *See* AR 56–65 (PTSD Evaluation), 66–74 (TBI Evaluation). Dr. Vogel confirmed Mr. Bee’s TBI and PTSD diagnoses and further diagnosed Mr. Bee with related disorders including Post-Concussion Syndrome/Cognitive Impairment, Primary Insomnia, Generalized Anxiety Disorder, Panic Disorder with Agoraphobia, and Major Depressive Disorder and assigned Mr. Bee a GAF score of 40, indicating “[s]ome impairment in reality testing or communication; major impairment in several areas, such as work or school, family relations, judgement, thinking, or mood.” AR 38, 56–57, 66, 106.

Mr. Bee’s PTSD evaluation indicated that he experienced “recurrent episodes of intense, panic-level anxiety . . . on an almost continuous basis,” and that his sleep was “interrupted by intrusive, disturbing thoughts, images, dreams,” resulting in Mr. Bee getting only approximately

four hours of “non-restorative” sleep per night. AR 56–57. The PTSD evaluation also stated that he suffered from daily moderate headaches, one to two migraines per month, dizziness, noise sensitivity, chronic fatigue, difficulty concentrating, blurred or double vision, and sensitivity to light, among other symptoms of PTSD. AR 64.

Mr. Bee’s TBI evaluation established that Mr. Bee suffered from numerous incapacitating symptoms, including “substantial and persistent” memory deficits, “difficulty maintaining attention or concentration on a task,” problems understanding “spoken and written language” relative to his pre-injury norm, “[m]oderately impaired judgment,” as well as “los[ing] track of brief moments of time.” AR 68–70. The TBI evaluation also found that Mr. Bee was “[o]ccasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation.” AR 69. The TBI evaluation found that Mr. Bee “[u]sually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions and judging distances [and] [h]as difficulty using assistive devices such as GPS (global positioning system).” AR 70. The TBI evaluation also noted Mr. Bee suffered from “daily moderate headaches,” “one to two migraines per month,” “dizziness,” “noise sensitivity; chronic fatigue; difficulty concentrating; blurred or double vision, . . . and sensitivity to light.” AR 67. Dr. Vogel’s examination was the basis for VA’s rating decision, issued after Mr. Bee’s separation, that Mr. Bee was 70% disabled by TBI and 70% disabled by PTSD. AR 104–15.

Soon after Dr. Vogel’s evaluation, in February 2013, Mr. Bee underwent a military separation physical. *See* AR 99–103. The separation physical noted, among other problems: TBI, delayed PTSD, intermittent pain in Mr. Bee’s back, ankle, shoulders, and knees, joint swelling, reduced strength in his right foot and quadriceps, abnormal deep tendon reflexes, sensorineural hearing loss, tinnitus, dizziness, vertigo, lightheadedness, memory lapses, night sweats, anxiety,

headaches, and depression. *Id.* The examiner noted Mr. Bee’s difficulty walking associated with TBI and saw fit to order a general neurology consult referral to properly evaluate the scope of Petitioner’s TBI. AR 102–03. Controlling guidance from the Assistant Secretary of Defense for Health Affairs required that separation physicals, at a minimum, “will include . . . a review of the individual medical history and medical record . . . [and] any indicated specialty consultations” *See* Policy Guidance for Separation Physical Examinations (Oct. 14, 2005). In addition, an assessment is made regarding a member’s worldwide qualifications for retention (according to Service guidelines) or need for referral to a MEB. *Id.* Despite not having received the required follow-up report from neurology, and despite finding serious neurological symptoms including “[d]izziness, vertigo, and lightheadedness,” “[m]emory lapses or loss,” and “[g]ait abnormality,” and failing to assess Mr. Bee’s worldwide qualifications for retention, the treating physician erroneously found Mr. Bee fit to separate.

Mr. Bee was honorably discharged from Active Duty on April 1, 2013, without ever being referred to the DES process, despite his severe, disabling TBI and PTSD. AR 87.

III. PROCEDURAL HISTORY

In April 2018, after having struggled with the symptoms of TBI and PTSD for nearly eight years, Mr. Bee sought correction of his Naval record from the Board to reflect disability retirement. On August 5, 2019, in a two-and-a-half page decision, the Board denied Mr. Bee’s petition. This lawsuit followed; Mr. Bee filed his Original Complaint on October 6, 2021. ECF No. 1.

Following oral argument and mutual Motions for Judgment on the Administrative Record, the parties agreed to remand the matter to the Board. This Court ordered remand on September 21, 2022, including in its order an opportunity for Mr. Bee to submit supplemental materials to the Board. Mr. Bee submitted his supplemental brief to the Board on November 18, 2022. AR 537–53. The Board issued a second denial on May 5, 2023. AR 470–88.

Because the Board's decision was once again arbitrary, capricious, contrary to law, and unsupported by substantial evidence, Mr. Bee filed his Amended Complaint on July 7, 2023. ECF No. 42. Mr. Bee now moves for judgment on the administrative record.

STANDARD OF REVIEW

The Court of Federal Claims reviews decisions of military correction boards based on the administrative record. *Walls v. United States*, 582 F.3d 1358, 1367 (Fed. Cir. 2009). In deciding a motion for judgment on the administrative record pursuant to RCFC 52.1, the court makes “factual findings . . . from the record evidence as if it were conducting a trial on the record.” *Bannum, Inc. v. United States*, 404 F.3d 1346, 1357 (Fed. Cir. 2005). “[R]esolution of a motion respecting the administrative record is akin to an expedited trial on the paper record, and the Court must make fact findings where necessary.” *Baird v. United States*, 77 Fed. Cl. 114, 116 (2007) (citing *A & D Fire Prot., Inc. v. United States*, 72 Fed. Cl. 126, 131 (2006)). The Court's inquiry is “whether, given all the disputed and undisputed facts, a party has met its burden of proof based on the evidence in the record.” *A&D Fire Prot., Inc.*, 72 Fed. Cl. at 131. Unlike summary judgment, genuine issues of material fact will not foreclose judgment on the administrative record. *Bannum*, 404 F.3d at 1356.

The Court reviews the administrative record to determine whether a board's decision is “arbitrary, capricious, unsupported by substantial evidence, or contrary to law.” *Martinez v. United States*, 333 F.3d 1295, 1314 (Fed. Cir. 2003); *see also Chappell v. Wallace*, 462 U.S. 296, 303 (1983) (“Board decisions . . . can be set aside if they are arbitrary, capricious[,] or not based on substantial evidence.” (citing *Grieg v. United States*, 640 F.2d 1261 (Ct. Cl. 1981), cert. denied, 455 U.S. 907 (1982); *Sanders v. United States*, 594 F.2d 804 (Ct. Cl. 1979))). “Substantial evidence is something less than the weight of the evidence but more than a mere scintilla of evidence.” *In re NuVasive, Inc.*, 842 F.3d 1376, 1379–80 (Fed. Cir. 2016) (quoting *In re Kotzab*,

217 F.3d 1365, 1369 (Fed. Cir. 2000)).

Courts must perform a rigorous review of an agency’s interpretation of its regulations. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (citations omitted). Courts review an agency’s interpretation of its own regulations as a question of law and defer to the agency’s interpretation only if it is a valid interpretation. 5 U.S.C. § 706 (“[T]he reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”); *Miss. Dep’t of Rehab. Servs. v. United States*, 61 Fed. Cl. 20, 24 (2004).

As this Court has recognized, it “must satisfy itself that the Board considered all of the relevant evidence and provided a reasoned opinion that reflects a contemplation of the facts and circumstances pertinent to the case before it.” *Verbeck v. United States*, 97 Fed. Cl. 443, 451 (2011) (citing cases); *Van Cleave v. United States*, 70 Fed. Cl. 674, 678–79 (2006) (stating that “boards must examine relevant data and articulate satisfactory explanations for their decisions”) (internal citations omitted). “If the Board ‘entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the [Board,] or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise,’ its decision runs afoul of even this lenient standard of review.” *Adams v. United States*, 117 Fed. Cl. 628, 654 (2014) (modification in original) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1916 (2020) (reversing agency for failure to “provide a reasoned explanation for its action” and noting that agency “failed to consider . . . conspicuous issues” relevant to its determination).

ARGUMENT

The Board relied primarily on three factors to justify its decision, none of which should

have been treated as substantially probative, let alone decisive. First, the Board relied heavily on FITREPs indicating apparently adequate performance of certain duties at FMTB-E. But those FITREPs reflect performance in an intentionally—and admittedly—low-impact non-operational billet outside of Mr. Bee’s rate, and they convey nothing about his fitness to perform his duties in his Infantry Unit Leader rate. Second, the Board placed substantial weight on Mr. Bee’s separation physical, applying the presumption of regularity as though it were irrebuttable. The physical itself was *not* regular, however, but rather violated controlling regulations. Third, the Board relied on the fact that Mr. Bee was not referred to an MEB for DES processing—the very error Mr. Bee sought to correct in his petition. Such circular logic erroneously treats the presumption of regularity as though it is, itself, evidence, and the Board incorrectly applied that “evidence” to overcome contrary evidence in the record.

The Board made numerous legal and factual errors to justify its focus on these three inapposite factors. It either overlooked or ignored controlling legal authority, including the requirement that it give Mr. Bee’s application “liberal consideration.” The Board also misread the record, ignoring some of Mr. Bee’s most compelling evidence, including the rating decision by VA that Mr. Bee is 70% disabled by TBI and, independently, 70% disabled by PTSD. The Board made no effort to relate the nature and degree of Mr. Bee’s disabilities to the requirements and duties that Mr. Bee may reasonably be expected to perform in his office, grade, rank, or rating, as described in Marine Corps regulations. Instead, the Board simply asserted without justification that his out-of-rate billet at FMTB-E was somehow a sufficient proxy for the combat duties of an Infantry Unit Leader. The Board’s decision is arbitrary and capricious, unsupported by substantial evidence, and contrary to law.

I. THE BOARD DID NOT FOLLOW BINDING AUTHORITY, INCLUDING THE REQUIREMENT TO GIVE MR. BEE'S PETITION LIBERAL CONSIDERATION

The Board's decision is fundamentally flawed by its rejection of controlling legal authority, including its erroneous comment that, "as a preliminary matter," the Board is "not the PEB and does not make medical fitness determinations." AR 472. The Board went on to disclaim any obligation to abide by controlling regulations, *id.* ("Neither DoDI 1332.38 nor SECNAVINST 1850.4E applies to this Board; rather, they provide regulatory guidelines for the Board to use in assessing whether there exists an error or injustice in your naval record."), or this Court's precedent, AR 472–73 (rejecting applicability of *Nyan v. United States*, to its own decision making and arguing that, contrary to extensive precedent, the Board "did not err in failing to make explicit findings as to the duties of [Mr. Bee's] 'office, grade, rank, or rating' as an Infantry Unit Leader at the E-6 paygrade").

These statements dismissing controlling authority are deeply flawed. *See, e.g., Kelly I*, 157 Fed Cl. at 119 ("Although Plaintiff was never referred to the PEB for evaluation before the Navy discharged him, the standard and related considerations established in SECNAVINST 1850.4E, as discussed above, guide the Court in evaluating the propriety of the BCNR's decision-making process.") (citing *Sawyer v. United States*, 930 F.2d 1577, 1581 (Fed. Cir. 1991) (recognizing the BCNR "is competent to make a disability determination in the first instance")); *Beckham v. United States*, 392 F.2d 619, 622 (Ct. Cl. 1968) (recognizing the BCNR, "like other administrative bodies, is bound by its own regulations" (citing *Hamlin v. United States*, 391 F.2d 941, 943 (Ct. Cl. 1968))). The Board's rejection of legal authority also infects other areas of its decision, resulting in clear legal errors such as the Board's failure to make explicit findings about the duties of Mr. Bee's office, grade, rank, or rating—indeed, refusal to even consider the Marine Corps instructions that explicitly lay out such duties—despite the requirement that "[e]ach case [be] considered by

relating the nature and degree of physical disability of the member *to* the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.” SECNAVINST 1850.4E, encl. 3, § 3301 (emphasis added).

The Board’s most obvious legal violation is its failure to treat Mr. Bee’s application with “liberal consideration.” Although the liberal consideration standard had been in use by correction boards for certain situations since 2014, the standard was clarified and expanded by Acting Under Secretary of Defense for Personnel and Readiness Anthony Kurta in 2017.³ The Kurta Memo requires the Board to afford “liberal consideration” to petitions seeking to modify a discharge on the basis of combat-related PTSD or TBI. The liberal consideration standard was later codified at 10 U.S.C. § 1552(h) for veterans, like Mr. Bee, “whose [PTSD] or [TBI] is related to combat.”

In *Doyon v. United States*, the Federal Circuit explained that both the Kurta Memo and 10 U.S.C. § 1552(h) apply to petitions requesting that a discharge be changed to a disability retirement. 58 F.4th 1235, 1238 (Fed. Cir. 2023) (“[T]he Kurta Memo’s guidance is not limited to discharge characterization upgrades and applies to ‘any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from General to Honorable characterizations.’” (internal citations omitted)). What’s more, the *Doyon* Court established that the Board has been required to apply the Kurta Memo and 10 U.S.C. 1552(h) to pending petitions for disability retirement. *Id.* at 1243, 1245–46. “The BCNR was obligated to ‘apply the law in effect at the time it render[ed] its decision.’” *Id.* at 1245 (quoting *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974)). But the Board failed to provide, or even reference,

³ See Anthony Kurta, Memorandum for Secretaries of the Military Departments, Clarifying Guidance to Military Discharge Review 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 (Aug. 25, 2017) (“Kurta Memo”).

liberal consideration for Mr. Bee's petition.

The Kurta Memo explains that “[l]iberal consideration includes but is not limited to” “greater leniency and excusal from normal evidentiary burdens” and an understanding that “[m]ental health conditions, including PTSD [and] TBI . . . are frequently unreported.” Kurta Memo at 3–4. Further, the “veteran’s testimony alone, oral or written, may establish the existence of a condition or experience” and a service-connection determination by the VA is “persuasive evidence that the condition existed or experience occurred during military service.” *Id.* at 2. Even when a civilian medical provider is consulted after a service member has been discharged, “[a] diagnosis made by a licensed psychiatrist or psychologist that the condition existed during military service will receive liberal consideration.” *Id.* Crucially, the statute also clarifies that the Board “shall” “review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal.” 10 U.S.C. § 1552(h)(2).

Despite that authority, the Board discounted nearly all evidence that Mr. Bee’s PTSD and TBI contributed to his discharge or dismissal, including Mr. Bee’s written testimony, his wife’s written testimony, the in-depth examination provided by board certified psychiatrist Dr. Michael Blumenfield, and Dr. Vogel’s neuropsychological examination and the consequent VA rating decision. *See, e.g.*, AR 479–80, 483. Despite this Court’s precedent explaining that the Board “should have considered plaintiff’s disability rating as relevant evidence in determining whether plaintiff was unfit for duty,” *Valles-Prieto v. United States*, 159 Fed. Cl. 611, 618 (2022), the Board’s notes reveal that it dismissed the VA evaluation as “not sufficient evidence as disability ratings are tied to the establishment of service connection and [are] manifestation-based,”⁴ AR

⁴ Despite acknowledging that VA ratings are “manifestation-based,” the Board does not address

490. *Cf. Ferrell v. United States*, 23 Ct. Cl. 562, 571 (1991) (“Plaintiff’s VA ratings, while not determinative on the issue of his fitness for duty at the time of discharge or of his eligibility for disability pay, are nevertheless entitled to great weight in these regards when based on a medical examination, as was the case here.”) (citations omitted). In light of a statutory and regulatory duty to give Mr. Bee’s application liberal consideration, the Board’s bases for dismissing probative medical and testimonial evidence are impermissible.

Because the Board failed to treat Mr. Bee’s petition with liberal consideration, the Board’s decision is contrary to law, arbitrary, capricious, and not supported by substantial evidence.

II. THE BOARD FAILED TO RELATE MR. BEE’S PHYSICAL DISABILITY TO THE REQUIREMENTS AND DUTIES THAT HE MAY REASONABLY BE REQUIRED TO PERFORM IN HIS OFFICE, GRADE, RANK, OR RATING

The Board also failed to make appropriate findings about the duties of Mr. Bee’s office, grade, rank, and rating when considering whether the nature and degree of his disabilities would prevent him from performing those duties. Instead, the Board applied an incorrect standard and offered unsupported speculation that Mr. Bee’s duties at FMTB-E were close enough for performance there to serve as a proxy. The Board’s failure to apply the proper standard renders its decision arbitrary, capricious, unsupported by substantial evidence, and contrary to law.

Contrary to the Board’s assertion that it need not “make explicit findings as to the duties of [Plaintiff’s] ‘office, grade, rank, or rating’ as an Infantry Unit Leader at the E-6 paygrade,” AR 473, the controlling regulation explains that “[t]he *sole standard* to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating.” SECNAVINST 1850.4E, encl. 3, § 3301 (emphasis added); *see also Adams*, 117 Fed. Cl. at 654 (failure to consider “an important aspect of the

how manifestations of TBI and PTSD symptoms so severe as to justify independent 70% disability ratings could possibly be consistent with its decision that Plaintiff was fit for duty.

problem” “runs afoul” of the standard of review); *Kelly I*, 157 Fed. Cl. at 119 (“[A] finding that a service member cannot perform his or her common military tasks is dispositive to the ultimate question of [a] member’s unfitness.”), 130 (stating that a remand is “appropriate for the Board to reconsider its decision” where it has “failed to take into account certain factors that it should have considered” in determining the service member’s fitness); *Nyan v. United States*, 153 Fed. Cl. 234, 243, 245 (2021) (“*Nyan I*”) (fitness determination was “not supported by substantial evidence” where, inter alia, “it d[id] not appear that the IPEB took into consideration Mr. Nyan’s grade level when it rendered its fitness determination), *vacated solely as to remedy*, 154 Fed. Cl. 463 (“*Nyan II*”) (remanding to the Board based on findings in *Nyan I*). This Court has noted that “the standards utilized for a disability determination and for considering common military tasks are effectively interchangeable.” *Kelly I*, 157 Fed. Cl. at 119.

The Board focused myopically and erroneously on Mr. Bee’s FITREPS at FMTB-E, without determining what Mr. Bee’s duties were at FMTB-E and then establishing whether those duties were that same duties Mr. Bee may reasonably be expected to perform in his office, grade, rank, or rating, as described in Marine Corps regulations. Nor did the Board consider whether Mr. Bee may reasonably have been expected to perform duties in his office grade, rank, or rating that were not a part of his role at FMTB-E—such as deployment to hostile areas or active combat.

As the Board acknowledged, “[e]ach case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.” SECNAVINST 1850.4E, encl. 3, § 3301, AR 473. Nevertheless, the Board failed to determine the requirements and duties that Mr. Bee may reasonably be expected to perform as a Staff Sergeant, Infantry Unit Leader with grade E-6 or to relate the nature and degree of physical disability of the Mr. Bee to those

requirements. Mr. Bee's medical conditions were incompatible with the requirements of his duties as a Staff Sergeant, grade E-6, Infantry Unit Leader. For example, like all infantry Marines, Mr. Bee needed to be able to navigate with a map and compass, conduct mounted land navigation, and navigate with a GPS. Infantry T&R Manual at 8-3, 9-11 to 9-21. But Petitioner's TBI caused him to "get[] lost in unfamiliar surroundings, ha[ve] difficulty reading maps, following directions, and judging distances[, and have] difficulty using assistive devices such as GPS." AR 70. Dr. Vogel reported that Mr. Bee "has gotten lost just going home." *Id.*

Mr. Bee needed to be able to coordinate military assets, including artillery and airstrikes, Marine T&R Manual at 9-13 to 9-17; indeed, he had received accolades in the past for calculating and calling in artillery fire, *see* AR 410–12. Yet, after his injuries, Mr. Bee was "[o]ccasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation." AR 69. Mr. Bee's combination of disorientation, difficulty reading maps and judging distances—all symptoms caused by his TBI and PTSD—are entirely incompatible with the requirement that a member in Mr. Bee's rating be able to coordinate military assets such as artillery and aircraft strikes while under intense enemy fire.

Instead, the Board contrived a lower standard of consideration that excludes most of the common military tasks an Infantry Unit Leader is expected to perform and paired that with speculation regarding the nature of Mr. Bee's duties at FMTB-E to conclude, without citing to any evidence, that "the duties [Bee] performed in this billet [at FMTB-E] were substantially the same as [he] would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit *in a garrison environment*." AR 484 (emphasis added). The Board's conjecture is not a valid basis for a decision because it fails to explain what the duties of an Infantry Unit Leader in garrison are, how those in garrison duties can be divorced from operational combat (which they

cannot), and how the duties performed by Mr. Bee at FMTB-E were similar to those duties reasonably expected to be performed by an Infantry Unit Leader in garrison. Had the Board actually explained Mr. Bee's duties as an Infantry Unit Leader in garrison, it would have been left to grapple with the fact that the majority, if not all, of the common military tasks required of an Infantry Unit Leader relate to service in an operational combat zone.

Moreover, the Board's suggestion that Mr. Bee could serve exclusively in garrison is not only incorrect, it is an implicit admission that even the Board did not believe that Mr. Bee could reasonably return to the deployable, operational infantry Marine community. Had the Board properly considered Mr. Bee's duties and his limitations it would have been clear that he was not fit to serve as an Infantry Unit Leader, not only because he was non-deployable, but also because preparing for and engaging in operational, deployable *combat* duty are the core common military tasks that an Infantry Unit Leader "could 'reasonably be expected to perform.'" This implicit admission that Mr. Bee could only perform duties in a garrison environment demonstrates that Mr. Bee was unfit to perform the duties of his office, grade, rank or rating and is entitled to disability retirement. *See Nyan I*, 153 Fed. Cl. at 243 (citing SECNAVINST 1850.4E, encl. 3, § 3301).

Mr. Bee's personal experience further establishes that the duties he was expected to perform were not limited to a garrison environment. His NAM write-up from his final deployment describes a patrol that "highlighted several of Sergeant Bee's characteristics as a stellar combat leader." AR 416.

As First Squad began to return to base, they came under heavy enemy fire from the northwest, northeast and southwest. The squad took cover and was unable to maneuver or egress. Sergeant Bee remained calm and coordinated the fires of his squad to best affect the enemy. As enemy firing positions were identified, he ordered rocket shots on them which silenced the enemy fire. Alpha Company Mobile Section acted as a Quick Reaction Force (QRF) and strong pointed the intersection of routes Jessica and Puma to cover First Squads egress. While returning to base, Sergeant Bees squad conducted a battle damage assessment of

the enemy firing positions to the north, which confirmed the origin of the enemy fire. As his squad continued their movement back to the Platoon COP they came under heavy fire from 200 meters to the north. During the engagement his squad took a casualty when a Marine was struck in the leg by small arms fire. Sergeant Bee immediately moved to the casualty to gain situational awareness on the direction of enemy fire, and to supervise the treatment of the wounded Marine. While under fire he identified and ordered the clearance of the MEDEVAC Landing Zone. As the Helicopters were inbound to the LZ, the smoke grenade marking the landing zone failed, and Sergeant Bee took it upon himself to move from a position of cover to wave in the helicopters. After the casualty had been lifted, Sergeant Bee coordinated the clearance of the building his squad had received fire from. Unable to locate any enemy they continued their egress to the platoon COP. This patrol highlighted several of Sergeant Bee's characteristics as a stellar combat leader. The total length of the patrol was fourteen hours and while under the stress of exhaustion, being surrounded by the enemy with no ability to egress and executing the MEDEVAC of a team leader, Sergeant Bee remained calm and was able to make excellent decisions.

AR 415-16. Dr. Vogel (whose evaluation is entitled to a presumption of regularity and liberal consideration) found that Mr. Bee's "Panic Disorder ([w]ith Agoraphobia) brings severe, acute anxiety which can be temporarily debilitating and far-reaching in its effects upon the Claimant's life," and "makes it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone." AR 58. It is implausible to think that the man who returned from that deployment following the IED blast that nearly killed him, afflicted as he was with PTSD and TBI, could repeat such calm and excellent decision-making under fire. The Board's failure to contend with the duties that had been required of Mr. Bee in the past, and those that Marine Corps regulations definitively established could reasonably be expected of him in the future, renders its decision arbitrary, capricious, unsupported by substantial evidence, and contrary to law.

III. THE BOARD ERRONEOUSLY RELIED ON INAPPOSITE FITNESS REPORTS THAT DID NOT REFLECT MR. BEE'S ABILITY TO PERFORM THE DUTIES OF HIS OFFICE, GRADE, RANK, OR RATING

The Board also improperly relied on Mr. Bee's FITREPs at FMTB-E as conclusive evidence of Mr. Bee's fitness to perform the duties of his office, grade, rank, and rating. These FITREPs were prepared by non-Marines, evaluated Mr. Bee's performance in a non-combat role,

and did not reflect Mr. Bee's fitness to perform the duties he may reasonably be expected to perform as an Infantry Unit Leader.

This Court has made clear that “a mere review of whether a member was adequately performing duties—regardless of what those were—immediately before separation is not sufficient.” *Kelly I*, 157 Fed. Cl. at 125. “[T]he question is not whether [Plaintiff] was disabled from performing any and all work that a[n Infantry Unit Leader] might be assigned to perform, but rather whether he was disabled from performing work that a[n Infantry Unit Leader] at the [E-6] grade could ‘reasonably be expected to perform.’” *Nyan I*, 153 Fed. Cl. at 243 (quoting SECNAVINST 1850.4E, encl. 3, § 3301). Despite this guidance, the Board relied on FITREPs from a non-operational billet outside of Mr. Bee's rating that did not reflect his fitness to perform the duties of his rate.

Mr. Bee explained to the Board that he was told by his superiors that the billet was intended as a respite from the challenges of life as an infantry Marine. *See, e.g.*, AR 551; AR 26. The Board even acknowledged that Mr. Bee's orders to FMTB-E were “likely based upon the needs of the Marine Corps and/or a desire to provide you the *well-deserve[d] opportunity to ‘take a knee’* after your multiple combat deployments.” AR 481 (emphasis added). Indeed, the Government has repeatedly conceded that Mr. Bee “was not serving in his MOS” while assigned to FMTB-E. Def's. Mot. to Dismiss at 9, ECF No. 23; *see also* Def's. Reply to Pl.'s Response to Def.'s Mot. to Dismiss at 9–10, ECF No. 25 (“Although *he was not performing as an Infantry Unit Leader during that time*, he was still able to adequately perform common military tasks at the Battalion.”) (emphasis added).

Because, as the Government has conceded, Mr. Bee's duties at FMTB-E were not related to his rate as an Infantry Unit Leader, his purported ability to perform those duties does not reflect

fitness to perform the duties of his office, grade, rank, or rating. Mr. Bee's FMTB-E FITREPs explain that his duties consisted of training "Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps." AR 385. By contrast, a representative FITREP from his time at "the 1/6" describes how this operational billet required Mr. Bee to "[p]repare for and execute partnered combat patrols with assigned Afghan National Army." AR 368. Other FITREPs from "the 1/6" required Mr. Bee to "Employ [his] squad in a tactical environment." AR 352, 357. There is simply no comparison between training infantry Marines, who are combatants, and training Navy Medical Department and Religious Program personnel, who expressly are not combatants. *See* SECNAVINST 1730.7E, encl. 2, ¶ 14 ("Chaplains are non-combatants. They cannot bear arms or seek weapons training in connection with their military duties nor will they seek weapons or warfare qualifications."); Bureau of Medicine Instruction ("BUMEDINST") 1500.33A at 3–4 (noting that "Direct patient care is the gold standard for competency assessment," while offering no reference whatsoever to combat, weapons proficiency, or other fighting skills).

In a similar matter, the Board itself acknowledged the problems with relying on inapposite FITREPs, because emphasizing FITREPs for a period when a servicemember was not performing the duties of his office, grade, rank, and rating simply answers the wrong question:

Rather, the AO found that the IPEB appeared to base its decision regarding Petitioner's fitness on his ability [to] competently perform administrative duties within a medical center. Accordingly, the IPEB failed to apply the appropriate standard of whether Petitioner was able to reasonably perform the duties of his office, grade, rank, or rating.

Board Decision on Remand at 6, *Nyan v. United States*, No. 20-cv-00343 (Fed. Cl. Nov. 8, 2021), ECF No. 34 (Board decision on remand granting disability retirement to Mr. Nyan). In the instant case, the Board's reliance on FMTB-E FITREPs was similarly misplaced; they did not show that Mr. Bee could perform the duties of his office, grade, rank, or rating because he was not performing

such duties at FMTB-E. To the contrary, in that non-operational billet, he was “tak[ing] a knee,” AR 481, and instructing Navy medics and chaplains. The Board’s heavy reliance on FMTB-E FITREPs was erroneous; because they did not reflect performance of the duties of Mr. Bee’s Infantry Unit Leader rating, they are entirely inapposite.

IV. THE BOARD MISAPPLIED THE PRESUMPTION OF REGULARITY

The Board repeatedly referenced the presumption of regularity, but the Board applied it improperly, essentially treating evidence that weighed against relief as virtually irrebuttable, while evidence that weighed in favor of relief received no such consideration. One egregious example is the contrast between the Board’s treatment of Dr. Vogel’s examination, which was not accorded a presumption of regularity (despite no apparent irregularities), and Mr. Bee’s separation physical, which was accorded the presumption (despite clear violations of Navy policy).

“The ‘presumption of regularity’ supports official acts of public officers. In the absence of clear evidence to the contrary, the doctrine presumes that public officers have properly discharged their official duties.” *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001) (quoting *United States v. Chemical Found., Inc.*, 272 U.S. 1, 14–15 (1926); *In re Longardner & Assocs.*, 855 F.2d 455, 459 (7th Cir. 1988)). However, “[i]t does not help to sustain an action that on its face appears irregular as here. We would say, here the presumption operates in reverse. If it appears irregular, it is irregular, and the burden shifts to the proponent to show the contrary.” *United States v. Roses*, 706 F.2d 1563, 1567 (Fed. Cir. 1983). The Vogel examination, which the Board discounted, is an official act that appears regular; it is entitled to presumptive validity. The separation physical, which the Board relied on, is the opposite; it was irregularly conducted and is not entitled to presumptive validity.

As explained above, binding guidance required that separation physicals, at a minimum, “will include . . . a review of the individual medical history and medical record . . . [and] any

indicated specialty consultations” See Policy Guidance for Separation Physical Examinations (Oct. 14, 2005). In addition, an assessment is made regarding a member’s worldwide qualifications for retention (according to Service guidelines) or need for referral to a MEB. *Id.* Although the separation physical noted difficulty in walking associated with TBI and ordered a general neurology consult referral, AR 431, there is no record evidence of such a follow-on evaluation, and the examiner did not wait to give Mr. Bee an opportunity to pursue such specialty consultation before signing off on the separation physical. The separation physical noted symptoms of “headache,” “dizziness, vertigo, and lightheadedness,” “[m]emory lapses or loss, “[g]ait abnormality,” and “[a]nxiety, emotional lability, and sleep disturbances,” it assessed Mr. Bee as having delayed post-traumatic stress disorder, major depression, difficulty in walking, and a history of traumatic brain injury, and included plans to treat Mr. Bee’s delayed PTSD with continued mental health therapy, to treat Mr. Bee’s depression with continued administration of the antidepressant venlafaxine, and to treat Mr. Bee’s difficulty in walking with a neurology general consult referral for a TBI evaluation. AR 428, 431. Despite all these findings of disability and injury, the separation physical inexplicably failed to make an assessment regarding Mr. Bee’s worldwide qualifications for retention. This inexplicable conclusion, combined with policy violations, is clear evidence of *irregularity*; the Board erred in according the separation physical the presumption of regularity, and this Court should reject the Board’s reliance on the “presumed regular” separation physical. *Driscoll v. United States*, 158 Fed. Cl. 399, 413 (2022) (“The Court will not presume regularity in the face of irregularity and will not allow the government to exploit the presumption to shield itself from its own errors.”).

On the other hand, the Board discounted Dr. Vogel’s examination, claiming that “Dr. Vogel had no professional obligation to provide an accurate assessment of [Mr. Bee’s] condition and its

effects, as he did not evaluate [Mr. Bee] for treatment purposes.” AR 479. First, this claim highlights the Board’s arbitrary and capricious treatment of evidence; the separation physical that it placed so much reliance on was also not for treatment purposes. Second, the Board’s claim that Dr. Vogel “had no professional obligation to provide an accurate assessment of [Mr. Bee’s] condition” is ludicrous on its face and violates an applicable presumption of regularity. The Board found no *irregularity* in how Dr. Vogel conducted his examination, even going so far as to affirm that “the Board did not doubt or question Dr. Vogel’s competency and credentials.” *Id.* As the Board acknowledged, VA ratings are “manifestation-based,” and Dr. Vogel, as a government employee performing an official act, had a professional obligation to provide an accurate assessment of Mr. Bee’s medical condition and its effects so as to report to the VA, in detail, how Mr. Bee’s disabilities manifested and, in turn, permit the VA to appropriately evaluate the extent to which Mr. Bee was (and still is) disabled. “The doctrine . . . allows courts to presume that what appears regular is regular, the burden shifting to the attacker to show the contrary.” *Butler*, 244 F.3d at 1340. In the absence of any evidence that Dr. Vogel acted irregularly, the Board had the burden of either demonstrating that his evaluation was irregular or accepting it as valid evidence.

V. THE BOARD IMPROPERLY RELIED ON THE VERY ERROR MR. BEE SOUGHT TO CORRECT TO JUSTIFY DENYING MR. BEE’S PETITION

The Board repeatedly relied on the very error Mr. Bee sought to correct—the Marine Corps’ failure to appropriately refer him for DES evaluation—as though it were evidence that Mr. Bee did not merit such evaluation. *See, e.g.*, AR 478 (“It is unlikely that any physician would, and apparently none among the numerous different specialty clinics and primary care providers that you visited at different locations after incurring your final TBI in June 2010 did, believe that your medical conditions significantly interfered with the performance of duties appropriate to your office, grade, rank or rating.”); AR 491 (Board notes citing the advisory opinion’s argument that

“Petitioner’s clinical presentations did not rise to a level as to indicate to his care providers consideration that he may be unfit for service or that his condition was appropriate for referral to a Medical Evaluation Board”).

The Board’s logic is circular. It amounts to little more than “Mr. Bee was fit because no one found him to be unfit”—and is contrary to judicial precedent. This Court has explained that, where substantial evidence indicates that a DES referral would have been appropriate, the military may not rely on its own failure to make a referral to deny later relief. *See Hassay v. United States*, 150 Fed. Cl. 467, 482 (2020) (“The Court therefore agrees with Mr. Hassay that—to the extent that the Navy violated its own regulations by not referring him to the Disability Evaluation System—it should not be permitted to rely on the absence of contemporaneous evidence that Mr. Hassay’s mental illness made him unfit for service.”). Put simply, the Board is not entitled to “retreat[] into a presumption of fitness” when, as here, “it is the agency’s own procedural errors which put plaintiff into a position of having to overcome this presumption.” *Ferrell*, 23 Cl. Ct. at 570. As explained in his Amended Complaint, Mr. Bee presented extensive evidence that he should have been referred to a MEB at the separation physical and that the Marine Corps erred by not doing so. Am. Compl., ECF No. 42 at 18–27. The Board cannot justifiably rebut evidence of what the Marine Corps *should have done* with “but they *didn’t*,” and the effort to do so renders its decision arbitrary, capricious and unsupported by substantial evidence.

VI. THE BOARD’S DECISION RELIED ON CRITICAL FACTUAL ERRORS

The Board’s decision is also arbitrary, capricious, and unsupported by substantial evidence because it is infected throughout with critical factual errors. For example, after erroneously concluding that “nothing in [Mr. Bee’s] medical history . . . would lead anyone, medically trained or otherwise, to believe that . . . any of your conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to your office, grade, rank or

rating,” the Board conceded that Dr. Johnson’s evaluation was a “potential exception to this statement,” since she “found significant impairment to [Mr. Bee’s] learning functions based upon [his] neuropsychological evaluation.” AR 478 & n.22. This concession was then “overcome” by the Board’s erroneous conclusion that a medical appointment just a few days later with a different provider resulted in Mr. Bee being taken off LIMDU and “returned to full duty with no medical limitations.”⁵ *Id.* The Board similarly comments that “significant duty limitations” assigned by “Neurology professionals” being lifted “just four months after the June 2010 TBI incident” “provided compelling evidence that [Mr. Bee’s] conditions never warranted referral to a MEB at any time prior to [his] discharge from the Marine Corps.” AR 478–79. But this timeline is false; as even the Board Examiner’s own chronology explains, Mr. Bee was not released from LIMDU until December 2010—over a month after he had transferred to the “take a knee” billet at FMTB-E. AR 381, 495 (Board chronology noting LIMDU until Dec. 20, 2010); 307 (transfer to FMTB-E on Nov. 16, 2010); *see also* AR 7, 81, 179, 1331, 1415. The Board’s inaccurate timeline misses the crucial point: Mr. Bee never returned to unrestricted duty as an Infantry Unit Leader or operational infantry Marine, and never resumed training Marines for or engaging in combat.

As explained elsewhere, *see, e.g.*, ECF No. 42 at 33, and acknowledged by the Board, *see* AR 481, Mr. Bee’s billet at FMTB-E was far less rigorous than any infantry billet and represented a “de facto LIMDU.” The implications regarding Mr. Bee’s fitness for duty as an Infantry Unit Leader may have been quite different had he returned to full duty at “the 1/6” compared to a return to “full duty” at the non-infantry, light-duty billet at FMTB-E. The latter does not demonstrate

⁵ The Board also added Plaintiff’s “successful performance of duties over the next 28 months” as evidence against the weight of Dr. Johnson’s evaluation, but, as discussed above, Plaintiff’s allegedly adequate performance outside of his rate at FMTB-E is inapposite, and cannot bear the weight of discrediting a thorough neuropsychological examination.

fitness for the duties Mr. Bee may reasonably be expected to perform in his office, grade, rank, or rating, as described in Marine Corps regulations. The Board's misapplication of the fitness standard led to erroneous conclusions about Mr. Bee's fitness that are unsupported by the record.

Elsewhere, the Board simply ignored or dismissed major factors that it is required to consider. For example, DODI 1332.38 recommends consideration of (1) whether the service member's "medical condition represents a decided medical risk to the health of the member or to the welfare [or safety] of other members were the member to continue on active duty"; and whether (2) the service member's "medical condition imposes unreasonable requirements on the military to maintain or protect the member." *Id.* § E3.P3.2.2.1–2 (emphasis added); accord SECNAVINST 1850.4E, encl. 3, § 3302(b)(1–2) (stating identical standard); see also *Yang v. United States*, 149 Fed. Cl. 277, 281 (2020) (remanding and directing the Board to consider all three criteria of DoDI 1332.18, the successor to DoDI 1332.38). The Board concluded that Mr. Bee's condition would not seriously compromise his health or well-being because "[a]fter being removed from LIMDU status in October 2010, [he] had only two medical encounters related to [his] TBI and PTSD conditions over the next two years." AR 481. This is inaccurate. After the October 2010 date the Board considered (incorrectly; Mr. Bee was removed from LIMDU in December 2010), Mr. Bee had at least *seven* medical encounters related to his TBI and PTSD. See AR 179–81, 426–27; see also Am. Compl., ECF No. 42 at 21–22. Further, the arbitrary two-year time frame excludes numerous medical encounters in 2013—including Dr. Vogel's detailed and worrying examination—as well as numerous medical encounters between June 2010 and October 2010, including Dr. Johnson's detailed examination that found extensive disabilities similar to those Dr. Vogel found. Even where the Board considered the DODI 1332.38 factors, the Board's reliance on inaccurate factual analyses renders its decision arbitrary, capricious, and unsupported by substantial evidence.

The Board wrongfully disregarded detailed medical evidence of Mr. Bee's unfitness based on an undue reliance on Mr. Bee's FMTB-E FITREPs. *See, e.g.*, AR 478, n.22 (disregarding the findings of Dr. Johnson's neuropsychological evaluation based on a misunderstanding of the outcome of a follow-up appointment and Mr. Bee's "successful performance of duties [at FMTB-E] over the next 28 months."). FITREPs simply cannot carry such probative weight. In another matter, the Board recognized that FITREPs are minimally probative, even where they reflect adequate in-rate performance, because commanders are expressly barred from commenting on medical fitness or the effects of medical issues in FITREPs. Board Decision on Remand, *Nyan v. United States*, No. 20-cv-00343 (Fed. Cl. Nov. 8, 2021) (Board decision on remand granting disability retirement to Mr. Nyan) ("Further, the IPEB applied undue weight in its evaluation of Petitioner's medical fitness to Petitioner's fitness (performance) reports, which are specifically prohibited from commenting on medical conditions."). FITREPs are not the place to comment on medical issues or counsel a service member for shortcomings in their performance resulting from such medical issues. Indeed, Mr. Bee explained that he was verbally counselled on multiple occasions for such performance shortcomings resulting from his TBI and PTSD symptoms. *See, e.g.*, AR 26–27.

The Board also contradicts itself on several critical issues. For example, the Board asserted that it "did not doubt or question Dr. Vogel's competency and credentials," AR 479, and affirmed that "the Board . . . certainly does not question the current severity of [Mr. Bee's] conditions or that [he] deserve[s] the disability compensation that [he] currently receive[s] for [his] injuries suffered in service to the nation." AR 480. Elsewhere, the Board affirms that Dr. Blumenfield's confirmation of Mr. Bee's TBI and PTSD symptoms "at the time of and since [Mr. Bee's] discharge . . . were not in question." AR 479. Nonetheless, the Board goes on to contradict itself

and conclude that the severity of Mr. Bee's symptoms is very much in doubt, arguing that Dr. Vogel's findings were contradicted by "objective evidence that such impairments were not nearly as debilitating as he reported them to be." AR 480. Of course, the "objective evidence" cited is Mr. Bee's "performance of duties" at FMTB-E, which, as explained above, is inapposite and cannot carry the evidentiary weight necessary to dismiss, out-of-hand, the medical findings of a certified and highly qualified psychologist. Two further factual errors provide insight as to how the contradiction should be resolved.

First, the Board Recorder's Log indicates a fundamental misunderstanding of Mr. Bee's symptoms and manifestations. The conclusion in the "comments" to the Log state: "Record does not support disability retirement at time of voluntary separation; delayed effects/manifestation of PTSD/TBI does not demonstrate he was unfit at time of sep[aration]." AR 489. But Dr. Vogel's examination—the basis for the VA's unquestioned disability compensation decision—took place in January 2013, which was three months *before* Mr. Bee's April 2013 discharge. *See* AR 56–65 (PTSD Evaluation), 66–74 (TBI Evaluation). The symptoms that are "not in question," and which had remained remarkably consistent between Dr. Johnson's 2010 evaluation and Dr. Vogel's 2013 evaluation, had manifested *prior* to Mr. Bee's discharge.

Second, the Board's characterization of Dr. Vogel's examination has no basis in the record. The Board commented that "the only time [Mr. Bee] ever reported such severity in [his] symptoms was in [his] effort to obtain the highest possible disability rating for compensation purposes." AR 487. This implicit allegation that Mr. Bee would present a false or exaggerated claim to the VA is baseless and negated by the Board's admission that it "certainly does not question the current severity of [Mr. Bee's] conditions or that [he] deserve[s] the disability compensation" he receives. AR 480. The Board's statement is also factually incorrect; Mr. Bee reported similarly severe

symptoms to Dr. Johnson in 2010, and, in September 2012, Mr. Bee was treated for major depression, including “symptoms of depression for 18 months, extreme irritability, decreased memory and concentration and anhedonia” (i.e., severe symptoms of PTSD and TBI). AR 495.

In other words, Mr. Bee’s symptoms were recognized *in service* and he had reported the same severe symptoms to at least three providers before his discharge. Thus, as the Board itself conceded, Mr. Bee’s TBI and PTSD symptoms “at the time of and since [Mr. Bee’s] discharge” are “not in question.” AR 479.

The Board dismissed the post-discharge report by Dr. Michael Blumenfield based on three incorrect or inapposite factors. First, the Board alleged that Dr. Blumenfield’s report “provided nothing to support his conclusion.” AR 479. To the contrary, Dr. Blumenfield explained that he had reviewed thousands of pages of medical records, including the Dr. Johnson and Dr. Vogel reports, had personally interviewed Mr. Bee and his wife, and had performed diagnostic tests on Mr. Bee. AR 163–66 (describing, among other tests, a “modified Bender-Gestalt”).

Second, the Board criticized Dr. Blumenfield’s alleged “financial incentive to reach a particular result,” despite having no basis in the record to speculate that Dr. Blumenfield’s compensation was in any way tied to the result of his examination. AR 479. This Court has explained that post-discharge private physicians’ opinions are relevant and cannot be dismissed merely because the physician was engaged years after separation or because they (like every other professional) were paid for their services. *See, e.g., Hassay*, 150 Fed. Cl. at 480 (“Dr. Foote’s opinion is no less relevant because it is based on his treatment of Mr. Hassay many years after he left the service.”); *Ferrell*, 23 Cl. Ct. at 571 (“The record contains substantial evidence that Ferrell was in fact partially disabled. Much of this evidence is post release. It is not inappropriate to consider this evidence” (citing *Powers v. United States*, 176 Ct. Cl. 388, 400 (1966))).

Finally, the Board commented that it's not clear "that [Dr. Blumenfield] knew the duties of a Marine rifleman" adequately to opine on them. AR 479. But this criticism ignores Dr. Blumenfield's explanation that Mr. Bee had described his history and role in the Marine Corps, AR 163–64, as well as the fact that Dr. Blumenfield's report contained a detailed description of Mr. Bee's TBI and PTSD symptoms. Nonetheless, the Board applied this unpersuasive rationale to entirely discount the probative value of Dr. Blumenfield's examination.

"Under the substantial evidence rule, all of the competent evidence must be considered, whether original or supplemental, and whether or not it supports the challenged conclusion." *Heisig v. United States*, 719 F.2d 1153, 1157 (Fed. Cir. 1983) (citing cases). The Board wrongfully cherry-picked evidence, relying on misunderstandings and falsehoods while ignoring substantial, probative evidence that contradicted its conclusion. The Board's serial factual errors, contradictions, and unjustified rejection of probative evidence render its decision arbitrary, capricious, and unsupported by substantial evidence.

VII. THE BOARD FAILED TO ADEQUATELY ACCOUNT FOR THE SEVERITY OF MR. BEE'S INJURIES AS ESTABLISHED BY HIS VA DISABILITY RATINGS

Although Mr. Bee's VA disability ratings are strong evidence that Mr. Bee suffered from reduced capabilities, the Board made no effort to reconcile its conclusion that Mr. Bee was fit for service with the severity of incapacity indicated by Mr. Bee's VA ratings. Indeed, the Board does not even reference or acknowledge the VA's disability ratings of 70% for PTSD and 70% for TBI—both of which considerably exceed the 30% disability rating that, if either condition is unfitting, would entitle Mr. Bee to a disability retirement.

This Court has held that VA disability ratings are relevant evidence that must be considered in determining unfitness for duty, *Valles-Prieto*, 159 Fed. Cl. at 618 (citing *Heisig v. United States*, 719 F.2d at 1157). In addition, the Kurta Memo similarly requires consideration of VA disability

ratings and further requires the Board review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge. *Doyon*, 58 F.4th at 1238. The Board ignored this evidence and made no attempt at all to reconcile the severity represented by Mr. Bee's 70% disability rating for TBI and independent 70% disability rating for PTSD with its conclusion that Mr. Bee was somehow nonetheless fit for service as an infantry Marine. The Board's decision is thus arbitrary, capricious, contrary to law, and unsupported by factual evidence.

CONCLUSION

Mr. Bee has exhaustively explained why he is entitled to a correction of his Naval record, including how the Marine Corps wrongfully failed to refer him for DES evaluation and why he would have been medically retired for unfitting conditions that were more than 30% disabling if the Marine Corps had properly followed its policies. For the reasons set forth above, the Navy's decision to once again deny Mr. Bee's request for correction of his Naval record to reflect disability retirement was arbitrary, capricious, unsupported by substantial evidence, and contrary to law. Mr. Bee requests that the Court order the Navy to correct his military record to reflect disability retirement, or, in the alternative, remand the case to the Board with directions to consider all of the record evidence in accordance with law and regulations, and to articulate a rational explanation for its decision.

Dated: September 20, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2023, a copy of **Plaintiff William Olas Bee's Motion for Judgment on the Administrative Record** was served on all parties via the Court's electronic case filing system.

/s/ Darryl H. Steensma

Darryl H. Steensma

No. 21-1970
(Judge Philip S. Hadji)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND CROSS-MOTION FOR JUDGMENT ON THE
ADMINISTRATIVE RECORD AND RESPONSE TO PLAINTIFF'S MOTION
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December 22, 2023

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Appx1547

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,)	
)	
Plaintiff,)	
)	
v.)	No. 21-1970
)	(Judge Philip S. Hadji)
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS AND CROSS-MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD AND RESPONSE TO PLAINTIFF’S MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD¹

Pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), the United States respectfully requests that the Court dismiss the amended complaint for lack of subject matter jurisdiction as time-barred; and, in the alternative, that the Court grant the United States judgment on the administrative record pursuant to RCFC 52.1.

STATEMENT OF THE ISSUES

1. Whether this Court lacks jurisdiction to entertain Mr. Bee’s claim because it is barred by this Court’s six-year statute of limitations, 28 U.S.C. § 2501.
2. Whether the May 5, 2023, decision of the Board for Correction of Naval Records (BCNR or board) is supported by substantial evidence, is arbitrary and capricious, or contrary to law.

¹ In support of this motion, we rely on the administrative record (AR), and the following brief. Mr. Bee’s assertion in his Amended Complaint that he “hereby incorporates by reference the entirety of the Original Complaint, including all factual allegations, as if fully set forth herein,” Am. Compl., ¶ 3 n.1, is improper and of no effect. *See, e.g., Gould, Inc. v. United States*, 29 Fed. Cl. 758, 759 (1993) (“An amended complaint entirely supersedes and replaces the original complaint”), *vacated on other grounds*, 67 F.3d 925 (Fed. Cir. 1995). Mr. Bee’s sweeping boilerplate adoption/incorporation clause also “lacks the specificity and clarity required by Rule 10(c).” *Wolfe v. Charter Forest Behavioral Health Sys., Inc.*, 185 F.R.D. 225, 229 (W.D. La. Feb. 19, 1999) (applying Fed. R. Civ. P. 10(c)).

STATEMENT OF THE CASE

I. Nature Of The Case

Pursuant to the Tucker Act, 28 U.S.C. § 1491(a), and the Military Disability Retirement Statute, 10 U.S.C. § 1201, Mr. Bee challenges the BCNR’s May 5, 2023 decision denying his request that he be medically retired. Generally, Mr. Bee contends that despite outward signs of successful service, at the time of his discharge from the Marine Corps, his ability to serve was significantly impaired by a service-connected traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). He contends he should have been deemed unfit for service and received a disability retirement rather than the honorable discharge he was awarded following his voluntary resignation pursuant to an early discharge program. At the time of his voluntary separation, the Government paid Mr. Bee \$106,956.18 (\$80,217.14 after taxes) in separation pay pursuant to the Voluntary Separation Program (VSP). AR 481.

Mr. Bee does not address the complaint’s untimeliness (presumably, he believes the board decision triggered the statute of limitations) and criticizes the BCNR’s decision on various grounds, each of which amounts to a criticism of how the board weighed the evidence. We discuss the untimeliness in section II of the Argument below and then again in Section III.

II. The Navy and Marine Corps Disability Evaluation System

10 U.S.C. § 1201 authorizes the Secretary of a Military Department to separate or retire a service member when he determines that the member is “unfit to perform the duties of the member’s office, grade, rank, or rating because of physical disability incurred while entitled to basic pay.” Under the authority of Department of Defense Instruction (DoDI) 1332.38, Secretary

of the Navy Instruction (SECNAVINST) 1850.4E implements the Department of the Navy's Disability Evaluation System (DES).²

It provides that it "is not within the mission of the Department of the Navy to retain members on active duty . . . to provide prolonged, definitive medical care when it is unlikely the member will return to full military duty." SECNAVINST 1850.4E, § 1005. Accordingly, "line commanders, commanding officers of MTFs [military treatment facilities] and individual medical . . . officers shall promptly identify for evaluation by Medical Boards . . . , those members presenting for medical care whose physical or mental fitness to continue naval service *is questionable.*" *Id.* (emphasis added); *see also id.* § 3106 ("Commanding officers of MTFs and individual medical and dental officers are to identify promptly for referral to the DES those members presenting for medical care whose Fitness for active duty is *questionable.*") (emphasis added). Once so identified, "[s]ervice members shall be referred into the DES as soon as the probability that they will be unable to return to full duty is *ascertained* and optimal medical treatment benefits have been attained." DoDI 1332.38, ¶ E3.P1.6.1. (emphasis added). "All members shall be referred for evaluation within one year of the diagnosis of their medical condition *if they are unable to return to military duty.*" *Id.* (emphasis added).

The first step, then, in the DES process is a *medical* evaluation by a Medical Evaluation Board (MEB), *see* DoDI 1332.38, ¶ E3.P1.1.1., which is a body of physicians convened, in most cases, by the commanding officers of naval hospitals or other designated MTFs, *see* SECNAVINST 1850.4E, §§ 2043, 3104. The MEB examines the member's medical history to determine whether the member meets the Service's medical retention standards. DoDI 1332.38.

² DoDI 1332.38 (Nov. 14, 1996, as amended July 10, 2006) and SECNAVINST 1850.4E Apr. 30, 2002) have been cancelled and superseded but were in effect at the time of Mr. Bee's discharge.

¶ E4.A1.1.2.11. “Any condition that appears to *significantly* interfere with performance of duties appropriate to a service member’s, office, grade, rank or rating will be considered for MEB evaluation.” *Id.* ¶ E4.1.3. (emphasis added).

If the MEB determines the member does not meet retention standards, it refers the member to a physical *disability evaluation*, *see id.*, ¶ E3.P1.1.2., by an Informal Physical Evaluation Board (IPEB), SECNAVINST 1850.4E, § 3201 (“[A]n active duty member . . . will be referred for disability evaluation only by a medical board that has found the member’s fitness for continued naval service questionable by reason of physical or mental impairment.”).

Critically, “[t]he mere presence of disease or injury alone does not justify referral. Referral should take place only when, in the opinion of a medical board, the defect may *materially interfere* with the member’s ability to perform reasonably the duties of his or her office, grade, rank, or rating/MOS on active duty.” *Id.*, § 3202c. (emphasis added).

Once the member is referred, the IPEB determines whether the member’s medical condition renders the member unfit for continued duty. DoDI 1332.38, ¶ E3.P3.2.1, SECNAVINST 1850.4E Apr. 30, 2002 ¶ 3302. The IPEB can find a member: (1) fit for continued naval service; (2) unfit for duty but ineligible for benefits; or (3) unfit for duty and eligible for medical separation or retirement. SECNAVINST 1850.4E, § 4211.

“Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.”³ *Id.* In assessing a service member’s fitness, the PEB

³ For purposes of determining a Marine’s ability to perform the duties of his “office, grade, rank, or rating,” 10 U.S.C. § 1201(a), his “rating” is his Primary Military Occupation Specialty (PMOS), *see* SECNAVINST 1850.4E, § 2057d (defining “rating” for Marine as his PMOS), which for enlisted infantry Marines like Mr. Bee is generally tied to his grade. *See* Marine Corps Order (MCO) 1200.17, encl. (1), at 3-51-3-62 (fig. 3-3).

must “[c]onsider all relevant evidence . . . , including the circumstances of referral.” *Id.* § 3303. “[T]he mere presence of a diagnosis is not synonymous with a disability.” *Id.* § 1004c(2)(a); *see also id.* § 2033 (same). Accordingly, “[t]he *sole* standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay.” *Id.* § 3301 (emphasis added). “Determining whether a member can reasonably perform his or her duties includes consideration of” whether “[t]he member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating” *Id.* § 3304a. “For example, whether the member is routinely required to fire his or her weapon, perform field duty, or to wear load bearing equipment or protective gear.” *Id.* However, “[i]nability to perform the duties of his or her office, grade, rank, or rating *in every geographic location and under every conceivable circumstance* will not be the sole basis for a finding of Unfit.” *Id.* § 3304c (emphasis added); *see also id.* § 3307a (same).⁴

When a member is referred for disability evaluation for a chronic impairment, in circumstances not immediately following an acute, grave illness or injury, “evaluation of the member’s performance of duty by supervisors . . . may provide better evidence than a clinical estimate by a physician of the service member’s ability to perform his or her duties.” *Id.* § 3303b; *see also id.* § 3205a (“[A]n assessment of the member’s performance of duty by his or her chain of command may provide better evidence of the member’s ability to perform his or her duties than a clinical estimate by a physician.”). “Particularly in cases of chronic illness, [such

⁴ The “following criteria may be included in the assessment: (1) [the m]edical condition represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty . . . , [and] (2) [the m]edical condition imposes unreasonable requirements on the military to maintain or protect the member.” SECNAVINST 1850.4E § 3302b.

evaluation] may be expected to reflect accurately a member's capacity to perform." *Id.*

Moreover, "[i]f the evidence establishes that the service member adequately performed his or her duties until the time the service member was referred for physical evaluation, the member may be considered Fit even though medical evidence indicates questionable physical ability to continue to perform duty." *Id.* § 3303c.

When a member is found unfit for duty and eligible for benefits, the IPEB assigns a disability rating. DoDI 1332.38, ¶ E3.P4.6. This rating is based on the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). 10 U.S.C. § 1216a(a); DoDI 1332.38, E3.P4.6. If rated over 30 percent disabled, the member retires with monthly disability pay and benefits. 10 U.S.C. § 1201. If rated below 30 percent, however, the member is separated with a lump-sum severance payment. *Id.* § 1203; DoDI 1332.38, ¶ E3.P7.5.3.

III. The BCNR

Congress has authorized the Secretaries of the military departments "acting through boards of civilians" to "correct [] error or remove an injustice" in "any military record." 10 U.S.C. § 1552(a)(1). Pursuant to 10 U.S.C. § 1552(a), the Secretary of the Navy established the BCNR to "consider and take corrective action on the Secretary's behalf, when authorized, or make appropriate recommendations to the Secretary regarding applications for the correction of military records." 32 C.F.R. § 723.2; *see also* SECNAVINST 5420.193 ¶ 3a. The Secretary of the Navy established regulations and procedures for the BCNR when considering service members' applications for relief. 10 U.S.C. § 1552(a)(3)(A); *see generally* 32 C.F.R. § 723.

When processing an application for relief, the BCNR convenes to (1) determine whether legal error or injustices exist in the "naval records of current and former members of the Navy and Marine Corps," and (2) "make recommendations to the Secretary" accordingly. 32 C.F.R.

§ 723.2(a). The BCNR reviews “all pertinent evidence of record,” but it is “not an investigative body.” *Id.* § 723.2(b). Thus, the BCNR will deny relief when the “record fails to demonstrate the existence of probable material error or injustice.” *Id.* § 723.3(e)(1)–(2). The BCNR “relies on 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.” *Id.* § 723.3(e)(2).

Following a hearing, or where, as here, the BCNR makes a recommendation without a hearing, the BCNR is required to “make written findings, conclusions, and recommendations,” and in cases where a BCNR denies relief it will include “a statement of the grounds for denial.” *Id.* § 723.6(a)(3). Unless final review is explicitly reserved for the Assistant Secretary of the Navy for Manpower and Reserve Affairs, the BCNR’s decision in a case constitutes final action of the agency. *Id.* § 723.6(e)(1).

IV. Statement Of Facts

A. Initial Enlistment, Deployments, And Injury

Mr. Bee enlisted in the Marine Corps in September 1999 and began his active-duty service on June 20, 2000. AR 224–27. After basic training, Mr. Bee served as an infantry rifleman (primary military occupational specialty (PMOS) 0311). AR 60. During his first tour, Mr. Bee participated in two combat deployments to Afghanistan -- the first from September 2001 to March 2002, and the second from October to December 2002. AR 194. Following a three-year tour as a recruiter (earning the additional MOS 8411), Mr. Bee participated in two additional combat deployments to Afghanistan with his second infantry unit. AR 316–42, AR 357–61, AR 368–77.

In May 2008, Mr. Bee, then a sergeant (E-5) Marine rifleman, “sustained a significant head injury” while on a combat deployment to Afghanistan. As a result, a January 2009 post-deployment health reassessment diagnosed Mr. Bee with a “[p]otential TBI with persistent symptoms” and indicated that he experienced “[m]emory problems,” “[b]alance problems or dizziness,” “[r]inging in the ears,” “[s]ensitivity to bright light,” “[i]rritability,” “[h]eadaches,” and “[s]leep problems.” AR 79. The reassessment also noted a “minor concern” regarding post-traumatic stress disorder (PTSD) and TBI. AR 80.

During a later deployment to Afghanistan, from December 2009 until June 2010, Mr. Bee “suffered extreme stress and trauma,” “los[ing] a good friend, who died in his arms after being shot in the head; in another incident, [Mr. Bee] fought to medically evacuate another wounded Marine, only for that Marine to die in the MedEvac helicopter en route to safety.” AR 35. Two days before his deployment was to end, Mr. Bee was severely wounded by the explosions of multiple improvised explosive devices; two fellow Marines were killed instantly, and several others from his squad were also severely wounded. Shortly thereafter, Mr. Bee was diagnosed with traumatic brain injury (TBI) and, later in 2010, with PTSD. AR 173-78.

In June 2010, Mr. Bee suffered a concussion due to an improvised explosive device (IED) blast, which resulted in his evacuation to Germany for treatment. AR 1, AR 9. Mr. Bee was diagnosed with TBI, transported back to the United States, and placed on limited duty (LIMDU) effective June 21, 2010. *Id.* Despite his injury and duty status, however, Mr. Bee continued to serve as an infantry squad leader with his unit until late August 2010, AR 1302-1306, and, after that, as a mortar section leader until his promotion to staff sergeant (E-6) on October 1, 2010, performing his duties despite his limited duty, AR 1307-1311.

B. Continued Service, Voluntary Separation and Final Physical

In September 2010, Mr. Bee was removed from LIMDU, and when he was promoted from sergeant (E-5) to staff sergeant (E-6) on October 1, 2010, his PMOS changed from 0311, rifleman, to 0369, infantry unit leader.⁵ AR 37, 60, 383. In preparation for his upcoming transfer, Mr. Bee's duties were changed from mortar section leader to his battalion's substance abuse coordinator (SACO), a position in which he served for less than a month and a half, until mid-November 2010. AR 383, 1307. The next day, Mr. Bee transferred to Marine Corps Field Medical Training Battalion-East (FMTB-E),⁶ where he served for over two years, until his separation, as a Military Instructor, earning performance reviews training thousands of Navy medical and religious ministry personnel (mostly Navy Corpsmen) slated to serve with Marine

⁵ Contrary to Mr. Bee's assertion, Am. Compl., at 9 n.4, he did not retain the PMOS of rifleman, nor was he awarded the additional MOS of rifleman. An infantry rifleman serves *only* in the grades from private (E-1) through sergeant (E-5). MCO 1200.17, ¶ 3110.2. Upon promotion to the grade of staff sergeant (E-6), Mr. Bee's PMOS became 0369, Infantry Unit Leader. AR 1307; *see also* MCO 1200.17, ¶ 3110.16. His only additional MOS was 8411 (Recruiter). *See* AR 1245-1271. Mr. Bee also asserts that because "[e]very Marine is a Rifleman," *all* Marines, regardless of grade or PMOS, "require continued proficiency in the aforementioned Rifleman infantry combat skills," ECF 47, at 9 -- expressly referring only to the skills required of an Infantry Unit Leader, *id.*, at 8. Mr. Bee is mistaken, transposing the organizational *ethos* of "Every Marine is a Rifleman" into a job description, applicable to all Marines. *See* Am. Compl., ¶ 88 n.16. General Alfred M. Gray, the 29th Commandant of the Marine Corps is the first to have stated "Every Marine is, first and foremost, a rifleman. All other conditions are secondary" *See* MARADMIN (a MARADMIN is a Marine administrative message)774/20, 28 Dec 20. "Since then, this has become the narrative that defines the culture and identity of the Marine Corps." *Id.*

⁶ Mr. Bee mischaracterizes FMTB-E as a "Navy" command. *See* Am. Compl., ¶ 39; ECF 47, at 21. We are not sure why that would matter, but it is a training command under the Marine Corps Training Command. *See* <https://www.trngcmd.marines.mil/Units/Field-Medical-Training-Battalion-East/>. *See also id.* at "History" button ("In July 2000, FMSS [predecessor to FMTB-E] was reassigned to Training Command (TRNGCMD), Quantico, VA. In October 2000, the school celebrated more than fifty years of continuous training and support of the Marine Corps aboard Camp Johnson."). It does not train all Navy medical and religious personnel, only those slated to serve in the Fleet Marine Force (FMF)—"Training the Navy's finest to serve with the few and the proud." *Id.* at "About" button.

Corps units in Marine Corps combat leadership, offensive and defensive operations, land navigation, weapons handling and marksmanship, and close order drill, and familiarizing them with field operations.⁷ AR 1314, 1316, 1321, 1326.

In October 2012, Mr. Bee requested to separate early from the Marine Corps through the Voluntary Separation Program (VSP) program (and payment). AR 9. As part of the separation process, Mr. Bee underwent the required separation physical and medical examinations and evaluations. AR 9. In his final physical, on February 13, 2013, Mr. Bee reported “no medical

⁷ While Navy medical personnel and chaplains are non-combatants, Religious Program Specialists (RPs) serving with combat Marines are combatants. See SECNAVINST 1730.7E, encl. (2), ¶ 1p (“RPs are combatants and will bear arms in connection with their military duties.”). Moreover, while Navy Combat Corpsmen serving with Marine Corps units are non-combatants, they are permitted under the Laws of War to be armed and to use deadly force in self-defense and in defense of their patients against unlawful attacks. See DoD Law of War Manual, § 4.10.1 (“Military medical and religious personnel . . . may employ arms in self-defense or in defense of their patients against unlawful attacks.”); *id.* § 7.10.3.5 (“Although medical personnel may carry arms for self-defense, they may not employ such arms against enemy forces acting in conformity with the law of war.” “Medical personnel may use force to defend themselves or the wounded and sick in their care from unlawful attacks, such as those from unprivileged belligerents or other persons violating the law of war.”). See also NAVMC 3500.84B, at 6-33 (detailing required training for performing care under fire, which includes returning fire); *Care Under Fire/Threat, Joint Trauma System*, Module 3: Care Under Fire / Threat (alloggy.com) (training Combat Corpsmen to first “[r]eturn fire and take cover” and “ensure fire superiority” before treating casualties, and that “[t]he best medicine on the battlefield is fire superiority!”). Furthermore, Combat Corpsmen and RPs assigned to serve alongside Marines in combat should be proficient in such things as combat leadership, offensive and defensive operations, land navigation, and weapons handling and marksmanship. See, e.g., MCRP 3-10A.3, *Marine Infantry Platoon*, mcrp_3-10a3_.pdf (marines.mil), at 1-4 (describing Platoon Corpsman as one of infantry platoon’s “key personnel” and noting that “[a] platoon is typically reinforced by one to three corpsmen from the battalion medical platoon. The senior corpsman advises the platoon commander and platoon sergeant on the physical well-being of the platoon.”); NAVMC 3500.84B, ¶ 4002 (detailing required individual training events designated as Health Service Support (HSS) Marine Corps common skills -- “core capabilit[es] for Naval personnel assigned to the [FMF]” -- which include weapons handling and marksmanship, land navigation, operating field radios, tactical movement techniques, hand and arm signals, marching under an assault load, and martial arts); *Corpsmen Continue Support of Marine Operations, Training*, <https://www.marines.mil/News/NewDisplay/Article/644296/navy-corpsmen-continue-support-of-marine-operations-training/> (“When corpsmen attach to Marine units in the field, they get more specific experience and training with line companies and infantry assets.”)

problem,” that “he [was there] for final physical,” and that he had an “excellent general overall feeling.” AR 99. He also reported “no decreased functioning ability” and “no sensory disturbances,” AR 99, and he was observed as having a “normal” affect. AR 100. Mr. Bee was thus “released w/o limitations,” AR 103, and separated with an RE-1A code, which meant he was qualified for service or separation, AR 193, and he was “deemed qualified for service,” AR 189, which qualified him for separation without further evaluation or referral. AR 9. On April 1, 2013, Mr. Bee was discharged pursuant to his VSP request. AR 9.

During his assignment to the FMTB (his last two years on active duty), Mr. Bee received fitness reports stating his “professional and military performance is outstanding” and ranking him in the upper half and ahead of many—at least 10—of the Marines of his grade in his reporting group. AR 2, 385–401.

C. VA Rating

On October 10, 2013, based on an examination of records conducted in the St. Petersburg, Florida Regional Office, the VA issued a Rating Decision in response to Mr. Bee’s application for VA disability compensation. AR 104. The VA diagnosed him with having a TBI and PTSD, found that his injuries were “service connected,” and rated each condition at 70 per cent. AR 104–15. He was also rated for other conditions and received an overall disability rating of 100%. AR 104–15.

D. The BCNR’s Decision

In April 2018, Mr. Bee submitted an application to the BCNR, requesting that his naval record be corrected to show that he qualified for disability retirement at the time of his voluntary discharge on April 1, 2013. AR 29. Mr. Bee contended that the Marine Corps erred by not convening an MEB for him. Moreover, he contended that, had the Marine Corps done so, the

MEB would have referred him to an informal PEB, which would have found his TBI and PTSD conditions unfitting at a rating of 70% (or at least greater than 30%), thereby entitling him to a military disability retirement. AR 29–47.

The BCNR obtained advisory opinions from the Senior Medical Advisor to the Secretary of the Navy Council for Review Boards (CORB) and the Director of the CORB, which were provided to Mr. Bee for his response. AR 5–8. The advisory opinions explain in detail why Mr. Bee is not entitled to relief. *Id.* Mr. Bee responded to the advisory opinions on July 23, 2019. AR 11.

The BCNR issued its decision on August 5, 2019. AR 1–3. In response to Mr. Bee’s contention that he was actually unfit for continued service at the time of his discharge, the BCNR concurred with the advisory opinions. AR 2. The BCNR found that: (1) Mr. Bee’s claimed disability conditions did not create a sufficient occupational impairment; (2) Mr. Bee voluntarily requested to be discharged from the Marine Corps, undermining his claim that he was erroneously discharged; (3) Mr. Bee’s medical clearance for separation in February 2013 was compelling evidence that his conditions were not sufficiently impairing to warrant referral to the DES; and (4) the VA’s assigned disability ratings were not persuasive on the issue of fitness for duty in light of his performance. *Id.*

E. Proceedings In This Court

On October 6, 2021, Mr. Bee filed his original complaint in this case. ECF No. 1. On December 14, 2021, the Government filed an unopposed motion to complete the administrative record to include Mr. Bee’s final physical, dated February 13, 2013, and his Department of Veterans Affairs Rating Decision dated September 12, 2013. ECF No. 11. On March 16, 2022, Mr. Bee filed his motion for judgment on the administrative record. ECF No. 20. The

Government filed a cross motion and response to Mr. Bee's motion and a motion to dismiss. ECF No. 23. The parties' responses and replies followed. ECF Nos. 24, 25.

Following oral argument, the parties sought, and the Court granted, a remand to the board. *See* ECF No. 36. On February 18, 2023, the Physician Advisor, for the Board for Correction of Naval Records submitted an advisory opinion (AO) to the board, which was provided to Mr. Bee's counsel on February 20, 2023. AR 0509-0519. On March 16, 2023, Mr. Bee's counsel submitted the response to board regarding the AO. AR 0501-0508.

On May 5, 2023, the board submitted a letter to Mr. Bee notifying him the results of the remand review. AR 0470-0488. On July 7, 2023, Mr. Bee filed his amended complaint. ECF No. 42. On September 20, 2023, Mr. Bee filed his motion for judgment on the administrative record, seeking an order directing the Navy to correct his military record to reflect that he was medically retired and, in the alternative, to remand the case to the BCNR. ECF No. 47.

SUMMARY OF THE ARGUMENT

Mr. Bee's claim is barred by the statute of limitations, 28 U.S.C. § 2501. At the time of his 2013 discharge, Mr. Bee had sufficient notice of his alleged disability, and hence, of a claim to disability retirement pay, but did not file this action until 2021, more than six years later.

Alternatively, the Court should enter judgment for the United States pursuant to RCFC 52.1. First, the board properly conducted the proceedings in obtaining advisory opinions, considering Mr. Bee's arguments and evidence, and arriving at a rational conclusion, giving due regard to the fact that Mr. Bee was diagnosed with TBI and PTSD. Second, the board properly applied the fitness-for-duty regulations. Third, the board identified more than substantial evidence showing that Mr. Bee was fit for duty at the time of separation, including the last two

and a half years performed in his MOS with high marks for his performance. Fourth, the board gave due consideration of the VA's post-service disability determination.

ARGUMENT

I. Standards Of Review

A. Motion To Dismiss Pursuant To RCFC 12(b)(1)

“In ruling on a motion to dismiss for lack of subject matter jurisdiction pursuant to the U.S. Court of Federal Claims Rule 12(b)(1), the Court accepts as true the undisputed allegations in the complaint and draws all inferences in favor of the plaintiff. If the motion to dismiss challenges the truth of jurisdictional facts alleged in the complaint, the Court may consider relevant evidence to resolve the dispute. The plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence.” *Travelers Cas. & Sur. Co. of Am. v. United States*, 103 Fed. Cl. 101, 103 (2012) (internal citations omitted).

B. Motion For Judgment On The Administrative Record

In resolving a motion for judgment on the administrative record, the standard of review “depend[s] upon the specific law to be applied” in the case. RCFC 52.1 Rules Committee Note, 2006 Adoption. In disability retirement claims, this Court “has no jurisdiction over [such] claims until a military board evaluates a service member’s entitlement to such retirement in the first instance.” *Chambers v. United States*, 417 F.3d 1218, 1225 (Fed. Cir. 2005). When reviewing decisions based on military records, this Court’s role is “limited” because “the substance of such decisions” is “committed to the discretion of government officials, [and] is frequently beyond the institutional competence of courts to review.” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). Accordingly, this Court will only overturn the decision of a military correction board if that decision is “arbitrary, capricious, contrary to law, or unsupported by substantial

evidence.” *Barnick v. United States*, 591 F.3d 1372, 1377 (Fed. Cir. 2010). Review in such cases is limited to the administrative record before the correction board. *Metz v. United States*, 466 F.3d 991, 998–99 (Fed. Cir. 2006).

The arbitrary and capricious standard “requires a reviewing court to sustain an action evincing rational reasoning and consideration of relevant factors.” *Advanced Data Concepts, Inc. v. United States*, 216 F.3d 1054, 1058 (Fed. Cir. 2000) (citing *Bowman Transp., Inc. v. Arkansas–Best Freight System, Inc.*, 419 U.S. 281, 285 (1974)). The plaintiff bears the burden of showing, “by cogent and clearly convincing evidence,” that a correction board’s action is arbitrary, capricious, contrary to law, unsupported by substantial evidence. *Wronke v. Marsh*, 787 F.2d 1569, 1576 (Fed. Cir. 1986) (quoting *Dorl v. United States*, 200 Ct. Cl. 626, 633, cert. denied, 414 U.S. 1032, 94 S. Ct. 461, 38 L.Ed.2d 323 (1973)); *see also Fisher v. United States*, 402 F.3d 1167, 1178-79 (Fed. Cir. 2005) (quoting *Furlong v. United States*, 153 Ct. Cl. 557, 563 (Cl. Ct. 1961)). The plaintiff also bears the burden of overcoming the “strong, but rebuttable, presumption” that the military discharges its duties “correctly, lawfully, and in good faith.” *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979) (citations omitted), *abrogated in part by* 10 U.S.C. § 628(b).

The substantial evidence standard is met so long as a “‘reasonable mind might accept’ [the] particular evidentiary record as ‘adequate to support [the contested] conclusion.’” *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)); *see also O’Hare v. United States*, 155 Fed. Cl. 364, 373 (2021). In short, “[a] board’s decision that is ‘reasonable and supported by substantial evidence’ will not be overturned.” *Mazarji v. United States*, 164 Fed. Cl. 298, 307 (2023) (quoting *Ford v. United States*, 150 Fed. Cl. 220, 224 (2020)). This standard of review “does not require a reweighing of

the evidence, but a determination whether *the conclusion being reviewed* is supported by substantial evidence.” *Heisig v. United States*, 719 F.2d 1153, 1157 (Fed. Cir. 1983) (emphasis in original). Thus, because “[t]his Court does not sit as a super correction board[,]” *Harris v. United States*, 14 Cl. Ct. 84, 89 (1987), *aff’d*, 861 F.2d 729 (Fed. Cir. 1988), the Court must not substitute its own judgment when reasonable minds could reach different conclusions upon the same evidence. *Wronke*, 787 F.2d at 1576.

II. The Court Lacks Subject-Matter Jurisdiction As The Complaint Is Time-Barred

“Claims under the Tucker Act are subject to the six-year statute of limitations in 28 U.S.C. § 2501, which provides that ‘every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.’” *Chambers*, 417 F.3d at 1223.

When a plaintiff claims entitlement to disability retirement from a branch of the Armed Services, the general rule is that “if the service member had neither requested nor been offered consideration by a disability board prior to discharge, the later denial of his petition by a corrections board, not his discharge, triggers the statute of limitations.” *Id.* at 1226 (citing *Real v. United States*, 906 F.2d 1557, 1560 (Fed. Cir. 1990)). However, “there are circumstances under which the service member’s failure to request review of his case by the appropriate PEB prior to discharge ‘has been held to have the same effect as a refusal by the service to provide board review.’” *Id.* at 1226 (internal citations omitted). “Specifically, such failure can invoke the statute of limitations when the service member has sufficient actual or constructive notice of his disability, and hence, of his entitlement to disability retirement pay, at the time of his discharge.” *Id.*

As the Federal Circuit explained, “*Real* thus framed the issue before it as ‘[w]hether the veteran’s knowledge of the existence and extent of his condition at the time of his discharge was

sufficient to justify concluding that he waived the right to board review of the service’s finding of fitness by failing to demand a board prior to his discharge.” *Id.* (internal citation omitted). *Accord Jones v. United States*, 30 F.4th 1094, 1105 (Fed. Cir. 2022) (“Mr. Jones was aware of the ‘incapacitating’ nature of his physical and psychological injuries and believed that they would ‘positively hinder’ his future employment . . . Accordingly, he had an understanding of the seriousness of his condition that was sufficient to justify a conclusion that he could have sought earlier redress, and we cannot say the facts underlying his claim were ‘inherently unknowable.’”) (quoting *Real*, 906 F.2d at 1561–62; and citing *Young v. United States*, 529 F.3d 1380, 1385 (Fed. Cir. 2008) (“It is a plaintiff’s knowledge of the facts of the claim that determines the accrual date.”)).

Here, Mr. Bee certainly had knowledge of the facts of his claim – before his voluntary discharge and well before the statute of limitations ran. His pleadings alone admit as much. “The Federal Circuit has held that ‘pleadings are judicial admissions and a party may invoke the language of the opponent’s pleading to render the facts contained therein indisputable.’” *Filtration Dev. Co., LLC v. United States*, 60 Fed. Cl. 371, 381 (2004) (quoting *E.C. McAfee A/C Bristol Metal Indus. of Canada, Ltd. v. United States*, 832 F.2d 152, 154 n.* (Fed. Cir. 1987)).

For instance, in May 2008, Mr. Bee, then a sergeant (E-5) Marine rifleman, “sustained a significant head injury” while on a combat deployment to Afghanistan. Am. Compl., ¶ 30. As a result, a January 2009 post-deployment health reassessment diagnosed Mr. Bee with a “[p]otential TBI with persistent symptoms” and indicated that he experienced “[m]emory problems,” “[b]alance problems or dizziness,” “[r]inging in the ears,” “[s]ensitivity to bright light,” “[i]rritability,” “[h]eadaches,” and “[s]leep problems.” *Id.* The reassessment also noted a minor concern regarding PTSD and TBI. *Id.*

During a later deployment to Afghanistan, from December 2009 until June 2010, Mr. Bee states in support of his claim that he “suffered extreme stress and trauma,” “los[ing] a good friend, who died in his arms after being shot in the head; in another incident, [Mr. Bee] fought to medically evacuate another wounded Marine, only for that Marine to die in the MedEvac helicopter en route to safety.” Am. Compl., ¶ 33. Two days before his deployment was to end, Mr. Bee was severely wounded by the explosions of multiple improvised explosive devices; two fellow Marines were killed instantly, and several others from his squad were also severely wounded. Am. Compl., ¶¶ 34–35. Shortly thereafter, Mr. Bee was diagnosed with TBI and, later in 2010, with PTSD. Am. Compl., ¶ 37.

Until he was honorably discharged in April 2013, pursuant to his approved request for separation under the Marine Corps VSP, according to Mr. Bee, his “symptoms did not abate, and he continued to suffer from TBI and PTSD.” Am. Compl., ¶ 40. Mr. Bee further states, he “suffered, among other symptoms, disorientation, nausea, and cognitive impairment attributable to his TBI, and was repeatedly treated for—among other things—anxiety, depression, chronic fatigue, migraines, and insomnia attributable to PTSD.” *Id.* Ultimately, because, in his view, “[i]t was clear he would not be fit or able to return to operational service as an Infantry Marine,” Mr. Bee requested separation under the VSP. *Id.* (emphasis added). Accordingly, he was separated on April 1, 2013. *Id.*

These are precisely the circumstances defined in *Real, Chambers, Young, Jones*, and others as triggering the statute of limitations on discharge. Mr. Bee did not file his original complaint in this action, however, until October 6, 2019, almost six and a half years after his claim accrued. His claim is thus barred by the six-year statute of limitations, 28 U.S.C. § 2501.

III. Even If Mr. Bee’s Claim Had Not Lapsed, The Board’s Decision Is Reasonable, Supported by Substantial Evidence And Not Contrary to Law

After carefully examining and addressing the entirety of the record of Mr. Bee’s claims, including Mr. Bee’s arguments, the CORB’s advisory opinions, and the VA disability determination, the BCNR’s 18-page decision identified the more than substantial evidence of Mr. Bee’s fitness for continued duty, and applied the law properly in doing so.

A. The BCNR’s Decision Is Rational And Supported By Substantial Evidence

The BCNR expressly acknowledged that Mr. Bee suffered from PTSD and TBI during his active-duty service in the Marine Corps, and that he manifested symptoms of these conditions before his discharge. *See* AR 471, 473, 488. However, the BCNR correctly explained that “the mere existence of these conditions does not imply that [Mr. Bee was] medically unfit.” AR 473; *see also* SECNAVINST 1850.4E, § 1004c(2)(a) (“mere presence of a diagnosis is not synonymous with a disability”); *id.* § 2033 (same); *id.* § 3202c (mere presence of disease or injury alone does not justify referral to MEB).

Instead, the BCNR properly recognized, *see* AR 472–73, 482, that, under Navy regulations, “[t]he *sole* standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay,” *Pope v. United States*, 162 Fed. Cl. 566, 577–78 (2022) (quoting SECNAVINST 1850.4E, § 3301) (emphasis in opinion) -- “[i]n other words, . . . whether [Mr. Bee] could perform his or her job duties,” *id.* at 578. The board thus exhaustively addressed “[t]he central question—*i.e.*, whether [Mr. Bee] was

able to perform his duties as [an Infantry Unit Leader] when the Marine Corps discharged him on [April 1, 2013].”⁸ *Id.*

First, the board noted “the existence of [Mr. Bee’s PTSD and TBI conditions during the relevant time period]” but found that his “medical and performance records did not reflect a significant level of functional impairment resulting from these conditions.” AR 471. After reviewing Mr. Bee’s service medical records, with particular emphasis on those following his June 2010 evacuation from Afghanistan until his separation in April 2013, the BCNR found “simply nothing in this medical history [that] would lead anyone, medically trained or otherwise, to believe that . . . any of [Mr. Bee’s] conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to [his] office, grade, rank or rating.” AR 478. The board explained that

[Mr. Bee’s] TBI condition was described as “mild.” [He] began running again without any symptoms within three months of [his] TBI, and w[as] restored to full duty with no medical limitations within four months. [He] consistently reported improvement in [his] symptoms, and described [his] own condition favorably during [his] SHPE [separation history and physical examination] with little or no pain. At the time of [his] discharge, [his] insight, judgment and cognitive processes were described as intact. This medical record would not likely result in the referral of any Marine to a MEB. It is unlikely that any physician would, and apparently none among the numerous different specialty clinics and primary care providers that [Mr. Bee] visited at different locations after incurring [his] final TBI in June 2010 did, believe that [his] medical conditions significantly interfered with the performance of duties appropriate to [his] office, grade, rank or rating.

⁸ In this inquiry, “[t]he member’s *actual* performance of his *particular* duties is the key factor.” *O’Hare*, 155 Fed. Cl. at 369 (emphasis in original). “Likewise, a member’s fitness depends not on ability to carry out the generic military activities of a hypothetical service member, but the tasks that he is personally expected to be able to perform, *i.e.*, ‘the duties of *his or her* office, grade, rank, or rating[.]’” *Id.* (citing DoDI 1332.38, E3.P3.4.1.1) (emphasis in opinion).

AR 477. In this regard, the BCNR reasoned that Mr. Bee was

seen by multiple professional military medical providers across a variety of medical specialties at three different medical centers or clinics during the relevant time period[,]” all of whom “had an ethical, professional, and regulatory obligation to refer [Mr. Bee] to a MEB if they believed that [his] conditions appeared to significantly interfere with [his] performance of duties appropriate to [his] office, grade, rank, or rating; that [his] conditions would prohibit returning [him] to [his] parent command in a medically unrestricted duty status following appropriate light duty; or that [his] conditions may seriously compromise [his] health or well-being if [he] were to remain in the Marine Corps.

AR 477. Applying the presumption of regularity, the BCNR observed that these providers’ “professional reputations and credentials could be jeopardized if they failed to fulfill this obligation, yet none of them ever did.” AR 477. The board concluded that the absence of any such contemporaneous medical observations of impairment constituted “compelling evidence” that Mr. Bee’s fitness for continued service was never in doubt. AR 477–78.

The BCNR also reasonably found Mr. Bee’s discharge physical (SHPE) to be “persuasive evidence” of his medical fitness at the time of his separation. AR 486. Accurately characterizing the SHPE as “the most reliable, relevant, and timely evaluation of [Mr. Bee’s] fitness for continued service as of the date of [his] discharge,” the board concluded that “the fact that [he was] found medically qualified for separation and not referred to the DES was compelling, if not convincing evidence, that [he was] medically fit for continued service at that time.” AR 487. Moreover, the board noted, Mr. Bee “reported during the SHPE an ‘excellent general overall feeling,’ and rated [his] pain severity as ‘0/10.’” AR 487. The SHPE also reflects that Mr. Bee reported “no medical problem” and “no decreased functioning ability. AR 699.

Further, the BCNR determined that Mr. Bee’s request to participate in the VSP program evidenced *his own view* that, at that time, he was not unfit for continued service. In that regard,

the board noted that Mr. Bee submitted his VSP application only *four days* after the release of MARADMIN⁹ 544/12, which announced the Fiscal Year 2013 VSP program for active component Marine Corps staff sergeants with, like Mr. Bee, between six and 20 years of service in several MOSs, including Mr. Bee's (0369). AR 480–81 & n.23. Among the published eligibility requirements for the VSP program, qualified Marines must not have been pending discharge with disability severance pay or evaluated for disability retirement. MARADMIN 544/12, ¶ 2F, <https://www.marines.mil/news/messages/messages-display/Article/895020/fy13-marine-corps-enlisted-voluntary-separation-pay-vsp-program/>. More significantly, “by accepting VSP, Marines must agree to serve three years in the Individual Ready Reserve (IRR).” *Id.* ¶ 2J.

In a similar vein, the BCNR reasonably relied upon Mr. Bee's own statements to determine that he was not unfit for continued service at the time of his separation. As the board explained:

[Mr. Bee] acknowledged in [his] original application to this Board that it was difficult for [him] to document [his] unfitting medical conditions. Although [he] made this observation in the context of describing the consequences of the failure to refer [him] to the MEB, the burden to provide such documentation and to prove that [his] medical conditions were unfitting remains with [him]. If it was difficult for [him] to provide evidence establishing [his] unfitting condition, it was even more difficult for this Board to find sufficient evidence to establish it. As [Mr. Bee] essentially acknowledged, [he] simply did not provide this Board with sufficient evidence to make that case.

AR 487–88.

Finally, and most significantly, the BCNR's consideration properly included “a review of [Mr. Bee's] performance [of his actual duties] leading up to his separation because, ‘[i]f the evidence establishes that [he] adequately performed his . . . duties until the time [he] was referred

⁹ A MARADMIN is a Marine administrative message.

for physical evaluation, [he] may be considered Fit even though medical evidence indicates questionable physical ability to continue to perform duty.” *Pope*, 162 Fed. Cl. at 579 (quoting SECNAVINST 1850.4E, § 3303c, and citing *Williams v. United States*, No. 02-585C, 2006 U.S. Claims LEXIS 498, 2006 WL 5629680, at *7 (Fed. Cl. June 2, 2006) (“Whether or not a member has a listed disability, the essential inquiry is always whether the symptoms prevented the member from satisfactorily performing his duties.”)); *Joslyn v. United States*, 110 Fed. Cl. 372, 393 (2013) (rejecting a disability claim because of satisfactory performance reviews despite injuries)); *see also* SECNAVINST 1850.4E, § 3205a (“[A]n assessment of the member’s performance of duty by his or her chain of command may provide better evidence of the member’s ability to perform his or her duties than a clinical estimate by a physician. Particularly in cases of chronic illness, [such evaluation] may be expected to reflect accurately a member’s capacity to perform.”); *id.* § 3303c (“If the evidence establishes that the service member adequately performed his or her duties until the time the service member was referred for physical evaluation, the member may be considered Fit even though medical evidence indicates questionable physical ability to continue to perform duty.”).

As evidence of Mr. Bee’s actual performance of duties, the BCNR relied upon fitness reports (FITREPs) documenting his performance during the final 28 months of his service in the Marine Corps while serving in his MOS (0369/Infantry Unit Leader) as a Military Instructor at FMTB-E.¹⁰ The board noted that these FITREPS reflected that Mr. Bee “consistently

¹⁰ Mr. Bee received four FITREPs assessing his performance during this period:

The first, covering the reporting period 16 November 2010 to 31 December 2010, was not observed due to its short duration. The second, covering the reporting period 1 January 2011 to 31 December 2011, is . . . the outlier FITREP which included an anomalous Billet MOS code for [his] position. The third covered the reporting period 1 January 2012 to 31

outperform[ed] the majority of [his] peers during the relevant period that [he] claimed to be unfit for continued service.” AR 471. Moreover, the board explained that these FITREPS showed that Mr. Bee “successful [sic] trained thousands of Navy Medical Department and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps,” including land navigation skills, and that he was “lauded” during this time for “maintaining ‘flawless accountability of personnel, weapons, and equipment for [his] platoons,’ for [his] ‘leadership, professional knowledge, and meticulous attention to detail . . . ,’ and for developing ‘field exercises that more accurately represent current tactics, techniques, and procedures currently being experienced in current operational theaters.’” AR 480. Thus, the board found, these fitreps demonstrated that, “[w]hile assigned as an Instructor at FMTB-E, [Mr. Bee] performed first-class physical and combat fitness tests; instructed and maintained marksmanship with the M9 service pistol and the M4 carbine; and instructed personnel on land navigation, offensive and defensive attacks, and ambushes,” correctly observing that, by doing so, Mr. Bee was in fact “‘maintain[ing] the capabilities of core and core plus skills for a 0300 Basic Infantry Marine.’” AR 484 (quoting Marine Corps Infantry Training and Readiness Manual, NAVMC 3500.44C, at 8-3 to 8-5, 9-11 to 9-21).

Finally, the board found, the duties Mr. Bee performed as a Military Instructor at FTMB-E, as reflected in his FITREPs, “were substantially the same as [he] would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment, which, despite the pattern of repeated deployments reflected in [his] career, is the

December 2012. The fourth and final FITREP, issued upon [his] discharge from the Marine Corps, covered the reporting period 1 January 2013 to 1 April 2013.

AR 471 n.2.

default status for Marines most of the time.” AR 484; *compare* AR 484 n.31 (reflecting billet description in Part B of Mr. Bee’s FITREPs with FMTB-E), *with* AR 1314, 1316, 1321, 1326 (reflecting billet accomplishments in Part C of observed FITREPs from FMTB-E, including “developed field exercise,” “trained students in offensive/defensive tactics, and land navigation field exercise and hikes,” “led platoons on . . . conditioning hikes,” “maintained flawless accountability of personnel, weapons, and equipment for his platoons,” “trained and mentored over 1200 students in . . . Marine Corps marksmanship,” “trained . . . students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling”) *and* MCO 1200.7, ¶ 3110.16 (summarizing primary duties of 0369 Infantry Unit Leader, including “assist commanders . . . in . . . training, deployment and tactical employment”; “supervise and coordinate the preparation of personnel, weapons and equipment for movement and combat, the establishment and operation of unit command posts, the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort”; advise[] the platoon commander on all issues of discipline, morale and welfare”).¹¹

Thus, the BCNR’s decision is supported by substantial evidence, as it evinces a “rational reasoning and consideration of relevant factors” such that a “reasonable mind might accept”

¹¹ Mr. Bee’s contentions that the board placed “undue reliance” on his FITREPS and that fitreps “simply cannot carry such probative weight,” ECF No. 47, at 44, are belied by the fact that SECNAVINST 1850.4E expressly requires fitness reports and performance evaluations to be provided to the PEB for consideration. *See* SECNAVINST 1850.4E, ¶ 4(d)(1)(c)1; *id.*, §§ 4209g, 4330b(9). In fact, as this Court has held, “performance evaluations are relevant to whether a service member is fit for duty.” *Hassay v. United States*, 150 Fed. Cl. at 480 (citing *Dzialo v. United States*, 5 Cl. Ct. 554, 564 (1984) (citing *Imhoff v. United States*, 177 Ct. Cl. 1, 7 (1966)) (holding that positive performance evaluations are relevant but not dispositive “as one of several indicia used to determine” fitness for duty). Moreover, the board did not rely solely on Mr. Bee’s FITREPS. *See, e.g., Chambers*, 417 F.3d at 1227 (substantial evidence supported Army’s discharge determination because plaintiff was not only performing effectively but had also undergone pre-discharge medical examination that did not reveal any fitness for duty issues).

[the] particular evidentiary record as ‘adequate to support [the contested] conclusion.’” *Holmes v. United States*, 98 Fed. Cl. 767, 780–81 (2011) (quoting *Advanced Data Concepts, Inc. v. United States*, 216 F.3d 1054, 1058 (Fed. Cir. 2000)).

IV. Mr. Bee’s Arguments To the Contrary Are Unavailing

Mr. Bee raises a variety of arguments concerning the board’s decision, all of which amount to quarrels with how the board weighed the evidence – some argued as legal failures, but ultimately no failure at all. For the Court’s convenience, we examine them in the order Mr. Bee’s issue statement lists them.

A. The Board Applied The Sole Applicable Legal Standard To Fitness. Mr. Bee’s Quarrel Is With Military Staffing And Assignment Decisions

Mr. Bee’s principal attack on the board’s decision, scattered throughout his brief and the issue statement is that the board failed to consider Mr. Bee’s performance in what the brief conceives as his proper duties. He argues this under the conceit that the board forsook the standard for fitness set forth in SECNAVINST 1850.4E: “unfitness to perform the duties of office, grade, rank or rating.” The board did no such thing – in fact, the board explicitly acknowledged the correctness of Mr. Bee’s assertion that that is the standard. *See* AR 472 (“ . . . you are correct that SECNAVINST 1850.4E establishes that ‘[t]he sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank, or rating’”); *see also* AR 473 (same).

Moreover, as we explain further below, the board’s own analysis demonstrates throughout, that that is precisely the standard the board applied, and Mr. Bee’s argument does not demonstrate otherwise. His actual argument is that he disagrees with *how* the board arrived at its conclusion of unfitness, that is, by relying on his two plus years of performance of duties which, he asserts, are not the *real* duties of his office, grade, rank, or rating. That assertion,

however, is not one shared either by his contemporaneous Marine leadership who promoted him and assigned him those duties – with no apparent disagreement from Mr. Bee – or by the board.

Turning to his most prominent argument – that the board’s review of two and a half years of Mr. Bee’s performance of his actually assigned duties was insufficient to conclude he was fit – Mr. Bee argues that the board rejected the essence of the *Nyan* decisions.¹² *E.g.*, ECF 47 at 20, 24. First, this argument is based on the argument that the duties he actually performed were not properly assigned, a challenge to a military decision this Court has no basis nor authority to review. To make his point, Mr. Bee dwells on the board’s statement that his argument regarding *Nyan* was misplaced. AR 472. The argument the board engaged there, however, concerned what the board perceived as Mr. Bee’s argument that the board should act as a PEB and make medical findings in the first instance. *Id.* That, the board pointed out, was not its role – a distinction of little consequence in this case where the board already agreed that its role was “to correct your record to reflect that you were medically retired if it finds the existence of an error or injustice in the fact that you were not.” *Id.* Notably, the board further pointed out that, in the *Nyan* case itself, “[o]n remand, this Board agreed with the Plaintiff’s contention in the *Nyan* case that the PEB applied the wrong standard in evaluating the Plaintiff’s fitness for duty, and therefore directed that the Plaintiff’s naval record be corrected to reflect that he was placed on the Temporary Disability Retired List.” AR 473 n. 8.

Moreover, contrary to Mr. Bee’s assertion, *see* Am. Compl., ¶ 81, the board in fact applied “the standards that a PEB would apply,” *i.e.*, those required by DoDI 1332.38 and SECNAVINST 1850.4E, “when evaluating whether [Mr. Bee] should have been referred to the

¹² *Nyan v. United States*, 153 Fed. Cl. 234, 243, 245 (2021) (“*Nyan I*”), and 154 Fed. Cl. 463 (“*Nyan II*”).

DES process,” *see* AR 481, 483 (applying PEB standards). Likewise, the board did not disregard this Court’s remand instructions to “[c]onsider all relevant evidence, apply the relevant criteria for assessing a service member’s fitness, as set forth [SECNAVINST] 1850.4E and [DoDI] 1332.38 § E3.P3.2.1.” Am. Compl., ¶ 81 (quoting ECF No. 35, at 5; ECF No. 36).

To fit the facts into his theory, Mr. Bee then purports to describe what his real duties should have been. Thus, his brief asserts, “Mr. Bee’s medical conditions were incompatible with the requirements of his duties as a Staff Sergeant, grade E-6, Infantry Unit Leader.” ECF 47 at 25. The brief then goes on to posit what those duties might be – such as map reading, coordinating artillery and airstrikes, and “most of the common military tasks an Infantry Unit Leader is expected to perform.” *Id.* Mr. Bee fails to grapple with the board’s point that, at any given time, the garrison environment is the default status for Marines most of the time, AR 484, and where, we might add, they no doubt are applying their operational knowledge, such as planners and instructors. Among other flaws with this effort to have the Court substitute its judgment for that of a military establishment, the argument ignores the Instruction’s statement that “[i]nability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of Unfit.” SECNAVINST 1850.4E, encl. 3, § 3304 (a) (“Deployability”).¹³

¹³ Moreover, it sets an inflexible and overly narrow view of fitness that would defeat the desire of many service members to serve and would deprive the United States of their services. *See, e.g.*, SECNAVINST 1850.4E, encl. 3, § 3306 (noting the rebuttable presumption that the member desires to be found Fit). Notably, the board found here that the evidence in this case was consistent with the presumption, finding at AR 486:

Although there is no direct evidence of your desires with regard to a PEB which never occurred, the circumstantial evidence in the record strongly suggests that that would have been your desire at the time. Specifically, the record reflects that you proactively sought to be restored to full duty in October 2010 for fear of being uncompetitive for further promotion. Further, Dr. Blumenfield

In any event, the true nature of Mr. Bee's argument and its weakness is laid bare by its insistence that the board's conclusion regarding his ability to perform the duties of his assigned occupational specialty is "conjecture" and "speculation." ECF 47 at 25. Mr. Bee has it backwards. The board has applied military expertise and judgment to what the military asks and expects of service members. *See* AR 483 ("This evidence conclusively demonstrated that you were fully able to perform the duties of your office, grade, rank, or rating despite your medical conditions."). Moreover, it ignores the Navy Instruction's guidance applicable to "determining whether a member can reasonably perform his or her duties," which is to consider whether "[t]he member, due to physical disability, is unable to *reasonably* perform the duties of his or her office, grade, rank, or rating (hereafter called duties)" SECNAVINST 1850.6, encl. 3, § 3304(a)(1) ("Reasonable Performance Of Duties – Considerations – Common Military Tasks"). In fact, when considering a combat task of the sort to which Mr. Bee would narrow the inquiry, the Instruction explains how such a task might be considered, "For example, whether the member is *routinely required* to fire his or her weapon, perform field duty, or to wear load bearing equipment or protective gear." *Id.* Determining whether performance may be "reasonably" performed and whether certain aspects of performance are "routinely required" requires military judgment. Mr. Bee's opinion to the contrary cannot meet his burden to demonstrate error or injustice and is itself conjecture.¹⁴

quoted you as stating your belief that "if you are a Marine in the infantry you do not ask for a medical retirement." Your words and actions are those of a Marine who desired to be found fit for duty, so it is unlikely that you would have been able to effectively rebut this presumption to prove otherwise.

¹⁴ None of this is to say that Mr. Bee himself does not know what was expected of him when performing in a deployed environment or what he actually did while deployed, which the board accepted. *E.g.*, AR 473. The analysis here, however, required a broader view of how the Navy programs requirements and allocates their performance to specific military specialties and

Moreover, the particular board statement the brief focuses on for that criticism, again, omits part of the statement, which supplies its context and meaning. Mr. Bee's brief complains that the board erred in stating that "the duties [Bee] performed in this billet [at FMTB-E] were substantially the same as [he] would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit *in a garrison environment.*" ECF 47 at 25. As for context, the board stated that the "non-medical evidence of your capabilities [i.e. performance reports] . . . conclusively demonstrated that you were fully able to perform the duties . . . despite your medical conditions. AR 484. The board further stated, that "not all Infantry Unit Leader billets are in operational Marine Corps combat units," and "the duties that you performed in this billet were substantially the same as you would have performed as an Infantry Leader Unit assigned to an operational Marine Combat unit un a garrison environment . . . which is the default status for Marines most of the time." AR 483. As for the truncation of the board's statement, the board explained, as alternative reasoning,

Even if the Board is mistaken in its conclusion that the FMTB-E Instructor billet was coded for MOS 0369 (Infantry Unit Leader), the duties that you performed in this billet were substantially the same as you would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment,^[31] *which, despite the pattern of repeated deployments reflected in your own career, is the default status for Marines most of the time.*

AR. 484 (emphasis added and not included in Mr. Bee's brief).¹⁵

grades and how it manages those specialties and grades across the force and throughout a service member's career.

¹⁵ Footnote 31 listed the duties associated with the billet. They included the following: Train Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps; Instruct, develop, and evaluate Navy Petty Officers in combat leadership; Coordinate and execute a progressive physical fitness program for Navy students; Provide a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear, and

Mr. Bee further complains that the board “failed to determine the requirements and duties that Mr. Bee may reasonably be expected to perform as a Staff Sergeant, Infantry Unit Leader with grade E-6 or to relate the nature and degree of physical disability of Mr. Bee to those requirements.” ECF 47 at 24-25. Apparently, Mr. Bee expected a list, which is not required. The board was, however, well aware of the requirement, and continually related the evidence to Mr. Bee’s medical condition and the tasks he was performing for an extended period prior to his voluntary resignation. Indeed, the board invoked the duties of MOS 0369, including specifically referencing the Marine Corps MOS Manual. AR 484.

In *O’Hare v. United States*, 155 Fed. Cl. 364, 375 (2021), this Court, in words applicable here, explained the distinction between Mr. Bee’s case and *Nyan*:

But two facts separate that case from Mr. O’Hare’s situation. First, [in *Nyan*] the IPEB “did not make any findings regarding what duties a Hospital Corpsman at the E4 grade is expected to perform[.]” . . . Here, the BCNR found that “the Navy assigns corpsmen to naval hospitals to perform clerical and administrative duties, including duties similar to the ones [Mr. O’Hare] performed while on limited duty[.]’ Second, the IPEB in *Nyan* ignored direct statements — unlike anything in the record here — from physicians and commanding officers that Mr. Nyan was not performing, and was not expected to be able to perform, the duties of a hospital corpsman.

B. Mr. Bee’s Quarrel With The Use Of “Non-Combat” Fitness Reports Is A Quarrel With Military Judgments And The Weighing Of The Evidence

In what is largely a rehash of Mr. Bee’s central theme, that the board failed to consider the duties of his grade rank and rating, Mr. Bee quarrels with the board’s resort to the duties he

accountability of gear and personnel; Establish and update lesson plans and supporting material; Familiarizes students in handling and maintenance of the M9 service pistol and the M4 rifle as well as developing their marksmanship; Responsible for instructing and supervising close order drill; Active member of Students Performance, Academic, and Disciplinary Review Boards; and Responsible for accountability, good order and discipline, and morale of personnel. AR 484.

performed for over two years of his service. In this argument, he pits his opinion concerning how he should have been assigned and whether the assignment was commensurate with his skills and training and the Marine Corps' expectations against the Marine Corps' own professional judgment in that regard. We fully appreciate the argument he is after: that the duties he performed, and he was rated so highly in performing should not be held against his claim for retirement. We also fully appreciate that, as in *Nyan* and *Kelly*, if it were true that these duties were those of a make-work job or some other to which he was consigned in recognition of the fact that he could not cut it in his PMOS, he would have an argument. Blocking that pursuit, however, is the board's fact finding, informed by its military experience and judgment, concerning the nature of his assignment, the propriety of that assignment consistent with his PMOS, and the weight that can be placed on evidence of his work in that assignment concerning his fitness. AR 483-485. In short, the board did not conduct "a mere review of whether a member was adequately performing duties—regardless of what those were," as criticized in *Kelly I*, 157 Fed. Cl. at 125. ECF 47 at 28.

But, Mr. Bee counters, he was told he got a "respite" with his FMTB-E assignment; the Government conceded that at FMTB-E, he "was not serving in his MOS" and that his duties were "not related to his rate as an Infantry Unit Leader," ECF 47 at 28; there is "no comparison" between "training infantry Marines, who are combatants, and training Navy Medical Department and Religious Program personnel, who expressly are not combatants," *id.* at 29; and "the Board itself acknowledged the problems with relying on inapposite FITREPs," *id.*

As for his assignment, the board, while stating that the assignment was that the FMTB-E assignment may have been based on the allowing Mr. Bee to "take a knee" after your multiple combat deployments," it recognized that it "likely was, *based upon the needs of the Marine*

Corps and/or a desire to provide you the well-deserve[d] opportunity to ‘take a knee’ after your multiple combat deployments.” AR 481 (emphasis added). It did so, however, in response to the suggestion that the assignment was a recognition of Mr. Bee’s unfitness. To the contrary, distinguishing a “take a knee” assignment consideration from an assignment to an inapposite billet, the board explained that the assignment reflected a vote of confidence in Mr. Bee’s fitness and reflected his ability to perform duties appropriate to his office, grade, rank or rating:

In addition to finding that no medical provider would reasonably have believed that your medical conditions significantly interfered with your performance of duties appropriate to your office, grade, rank or rating, the Board also found that your conditions clearly did not prohibit your return to your parent command in a medically unrestricted duty status following appropriate light duty. As discussed above, you were, in fact, returned to your parent command in a medically unrestricted duty status after just four months of light duty following your TBI incident. Your assignment to a non-operational training billet upon your restoration to full duty status was not based upon any medical limitations, as none were assigned.

AR 481.

In any event, the premise of Mr. Bee’s argument, that line Marines who are not serving in combat are unfit, is preposterous, unaccompanied as it is by a demonstration that there are enough combat billets at any given time to support such a deployment regimen; nor would it make for a healthy or useful assignment system to insist that Marines who do not serve in combat are unfit and should be retired. What matters here is whether the board’s conclusion concerning Mr. Bee’s “ability” to serve in his grade was supported by substantial evidence – and as the board’s specific findings concerning his performance of his duties in a billet consistent with his MOS provided that evidence. *See* AR 484 (“The billet MOS for this position is coded for an Infantry Unit Leader (MOS 0369), as reflected on your FITREPs); *id.* (“[T]he duties that you performed in this billet were substantially the same as you would have been performing as

an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment[.]”); *id.* (“The Board also found the duties described for this billet in your FITREPs to be remarkably similar to the Infantry Unit Leader requirements that you quoted from the Marine Corps MOS Manual”).

As for the concessions, these statements predate the board’s remand and at best recognize that Mr. Bee was not in actual combat serving as a unit leader, which as explained is of no consequence as only his “ability” to perform the duties of his rank or rating are at issue. Moreover, as the board explained, even if it was mistaken about the coding of his various positions (*see* FN 31 for an explanation of the evidence concerning a potential clerical error concerning one of his assignments) “the duties that you performed in this billet were substantially the same as you would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment,^[31] which, despite the pattern of repeated deployments reflected in your own career, is the default status for Marines most of the time.” AR 484.

Mr. Bee’s argument about the difference between training combatants and non-combatants has no support other than his opinion—to which we might add, if anything, training non-combatants might be more difficult.¹⁶ In any case, he does not show the board erred by relying as it did on the objective evidence cited by the board concerning his suitability to deliver the training and his proficiency in doing so and the relation of that to his ability to perform the duties of his rank and rating. AR 484.

The brief closes this discussion by quoting the board’s discussion of *Nyan* at length, wrapping it around the brief’s own assertion that the board used “inapposite FITREPs,” ECF 47

¹⁶ He also trained combatant Religious Support Specialists. AR 37, 84, 89, 93-94.

at 29, and identifying the “problems” *id.*, in doing so. As explained, however, the board did no such thing, and the brief’s discussion and conclusion fail to establish that the “problem” exists in this case.

C. The Board Properly Applied The Presumption of Regularity. Mr. Bee’s Quarrel Is With the Weight The Board Afforded The Evidence

Mr. Bee alleges that the board failed to properly apply the presumption of regularity by “ignoring” and “dismiss[ing]” the results of Dr. Vogel’s C&P examination. Am. Compl., ¶ 99; *see also* ECF No. 47, at 38–39 (“discounted” the exam). In doing so, however, Mr. Bee conflates the presumption of regularity with the *weight* the board afforded the examination. In other words, the board did not question the *regularity* of the examination; in fact, it “accept[ed] the examination] as valid evidence,” ECF No. 47, at 40. *See* AR 479 (board “did not doubt or question Dr. Vogel’s competency or credentials”).

“The ‘presumption of regularity’ supports official acts of public officers. In the absence of clear evidence to the contrary, the doctrine presumes that public officers have properly discharged their official duties.” *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001) (citing *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14–15 (1926)). Thus, a plaintiff must “overcome the strong, but rebuttable, presumption that administrators of the military, like other public officers, discharge their duties correctly, lawfully, and in good faith” in order to show error in the decisions of administrators and military officers. *Doe v. United States*, 132 F.3d 1430, 1434 (Fed. Cir. 1997).

Here, the board did not challenge the sufficiency or propriety of the exam, it “simply did not assign significant weight to [Dr. Vogel’s] conclusions regarding [Mr. Bee’s] functional impairments at the time [of discharge], as they were not based upon any direct observation of [his] performance or supported by the objective evidence detailing [his] performance and

capabilities during the relevant period.” AR 480. Thus, the board reasonably found Dr. Vogel’s examination, “did not overcome the presumption of regularity assigned to the judgment of the numerous military medical providers who treated and assessed your medical conditions during the period in question, none of whom believed that they warranted referral to a MEB.”

In accordance with its governing regulation, SECNAVINST 5420.193, the board also “applied the presumption of regularity to the assessments made by [Mr. Bee’s] numerous medical providers between [his] TBI in June 2010 and [his] discharge in April 2013.” AR 478. Based on its review of this medical history, the board determined that “there is simply nothing in this medical history which would lead anyone, medically trained or otherwise, to believe that . . . any of [Mr. Bee’s] conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to [his] office, grade, rank or rating.” AR 478.

Mr. Bee complains that, although the separation physical noted difficulty in walking associated with TBI and ordered a general neurology consult referral, “there is no record evidence of such a follow-on evaluation, and the examiner did not wait to give Mr. Bee an opportunity to pursue such specialty consultation before signing off on the separation physical.” ECF 47 at 30. He also points to various findings in that physical and its conclusion that Mr. Bee was having delayed PTSD, major depression, difficulty in walking, and a history of TBI, and included plans to treat those conditions through continued mental health therapy and an antidepressant. *Id.* This, the brief argues, required a finding of Mr. Bee’s unsuitability for worldwide deployment and any such absence is evidence “irregularity.”¹⁷ *Id.*

¹⁷ Mr. Bee waived any argument regarding the SHPE’s failure to make an assessment regarding his worldwide qualifications for retention by failing to raise it before the board. *Christian v. United States*, 46 Fed. Cl. 793, 802 (2000) (“issues and arguments not made before the relevant military correction board or administrative agency are deemed waived and [cannot] be raised in a judicial tribunal”). But even if he had not, the SHPE “Released [him] w/o

The board, however, acknowledged that, on October 4, 2010, a civilian healthcare provider found significant impairment to Mr. Bee's learning functions based upon a neuropsychological evaluation. But Mr. Bee's follow-up neurology appointment a week later, at which it was determined that his condition had improved to such a degree that he could be returned to full duty with no medical limitations, and his successful performance of duties over the next 28 months, led the board to conclude that "whatever impairment was identified by the civilian provider who conducted this neuropsychological evaluation did not raise questions about Mr. Bee's ability to continue serving."¹⁸ AR 478 n.22. In any event, singular examination, conducted almost three years before his discharge, is a far cry from the "clear evidence" required to rebut the presumption that the board, themselves public officials, have properly discharged their official duties in weighing the evidence presented to them – evidence that is more than substantial. *Butler*, 244 F.3d at 1340.

D. The Board Did Not Rely On Mr. Bee's Non Referral To The DES; Rather It Saw It As Consistent With The Evidence Of His Fitness

Mr. Bee alleges that "[t]he Board repeatedly relied on the very error Mr. Bee sought to correct—the Marine Corps' failure to appropriately refer him for DES evaluation—as though it were evidence that Mr. Bee did not merit such evaluation." ECF No. 47, at 40. The board did no such thing. Rather, it said, "for the same reasons that the Board found that the objective

Limitations" – in other words, he was worldwide qualified and had no need for a MEB. AR 699-703.

¹⁸ The board also found no basis in regulation for Mr. Bee's purported requirement that his SHPE could not be completed without the results of the routine specialty consultation referral, particularly in light of the fact that the Board found "no indication in [his] medical records that [he] ever followed-up on this referral." AR 487. Further, Mr. Bee cites no evidence that he was not given an opportunity to consult, or that he requested such an opportunity, or how a "routine" examination would have changed the board's analysis – especially in light of the fact that at his pre-discharge physical, he reported himself to have an "excellent general overall feeling." AR 99.

medical evidence did not sustain your referral under the criteria you cited, the Board also did not believe that it would support the conclusion that your condition required assignment limitations.” AR 474 n. 11.

The purported grounds for Mr. Bee’s argument is *Hassay v. United States*, 150 Fed. Cl. 467, 482 (2020). At issue there were the details of the servicemember’s mental condition. The court, after identifying a number of red flags, concluded:

Dr. Foote, in fact, opined that the Navy medical staff that dealt with mental health care, including Dr. Killian, may have dropped the ball when it came to Mr. Hassay’s care. The Court therefore agrees with Mr. Hassay that—to the extent that the Navy violated its own regulations by not referring him to the Disability Evaluation System—it should not be permitted to rely on the absence of contemporaneous evidence that Mr. Hassay’s mental illness made him unfit for service.

Id. at 482.

The Court qualified its statement, however, explaining that, “[a]s the government observes, the quoted provision is an introductory paragraph to a list of conditions that may warrant referral to the Disability Evaluation System. But such referral is required only if the conditions cause the member to be unfit to perform his duties.” *Id.* n. 13 (citing the applicable manuals).

At the outset, we note that we do not disagree with the general proposition that a point cannot be made by assuming the correctness of the point. Here, for example, the board could not—and did not—conclude that Mr. Bee was fit simply because he was not referred to the DES on the premise that he was not unfit. Nor, for that matter, could Mr. Bee argue that because he was not referred to the DES and, in his view, should have been, he was therefore unfit. Here, the question before the board was whether, on the evidence and argument submitted, a violation of law or arbitrary reasoning caused Mr. Bee to have been improperly deemed fit. Any other

question is subordinate at best and, as we have shown, the record demonstrates that there was no error in allowing Mr. Bee to resign, *at his request*, with an honorable discharge, and no medical impediment to continue had he wished.

In any event, the board did not solely rely on the absence of a DES referral to justify its finding of Mr. Bee's fitness. The board also relied on, *inter alia*, evidence that he satisfactorily performed his properly assigned duties. *See* AR 485, AR 952. More to the point, the board did not rely on Mr. Bee's non-referral as evidence *in itself*. Rather, the board's observation concerning a reference to the DES was a consequence of its finding that there was no error in not finding him unfit. Specifically, in this regard, the board stated,

[t]his medical record would not likely result in the referral of any Marine to a MEB. It is unlikely that any physician would, and apparently none among the numerous different specialty clinics and primary care providers that [Mr. Bee] visited at different locations after incurring [his] final TBI in June 2010 did, believe that [his] medical conditions significantly interfered with the performance of duties appropriate to [his] office, grade, rank or rating.

AR 478. In short, and in parallel, if not shorthand, for the board's conclusion that Mr. Bee was not unfit, the board also concluded that Mr. Bee's "conditions never warranted referral to a MEB at any time prior to [his] discharge from the Marine Corps." AR 478-79.

E. The Board's Decision Followed The Law

1. Mr. Bee's brief opens this argument with a broad swipe aimed at what he conceives as the board's *intention* to not follow the law, a conception borne neither by the law concerning the presumption of regularity of Government officials nor by the board's detailed analysis. *See* ECF No. 47, at 28 ("The Board went on to disclaim any obligation to abide by controlling regulations . . ."). The lone statement on which the brief balances that, its opening argument, is the board's statement that, "as a preliminary matter," the board is "not the PEB and

does not make medical fitness determinations.” ECF 47 at 20, citing AR 472. That Mr. Bee puts any weight on this is surprising at least. First, it fails to cite the board’s full “preliminary” statement attached to that observation, *i.e.*, the board’s agreement with Mr. Bee that the “sole standard to be used in making determinations of physical disability.” AR 472. Second, the board explained what is at best irrelevant to its actual decision, the modest but correct point that it serves a different function than the PEB and its membership has different (non-medical) qualifications. *Id.* And, finally, the board made the only point relevant to Mr. Bee’s assertion: that although the board does not make “medical fitness determinations,” “this Board is empowered to correct your record to reflect that *you were medically retired* if it finds the existence of an error or injustice in the fact that you were not.” *Id.* (emphasis added). The board further explained, although “neither DoDI 1332.38 nor SECNAVINST 1850.4E applies to this Board; rather, *they provide regulatory guidelines for the Board to use in assessing whether there exists an error or injustice* in [Mr. Bee’s] naval record.” AR 472 (emphasis added). The net result of this skirmish over the board’s modest but correct observation about its role is that the board recognized its duty to determine whether Mr. Bee should have been medically retired—and, as explained above and further below, went on to do just that.

2. Mr. Bee goes on to assert that the board’s “most obvious legal violation is its failure to treat Mr. Bee’s application with ‘liberal consideration.’” ECF 47 at 21 (citing the Kurta Memo and 10 U.S.C. § 1552(h)). Yet, Mr. Bee himself, though represented by able counsel, never presented this argument to the board—and as explained below, it is not evident how or that liberal consideration would change the analysis or the outcome.¹⁹ Mr. Bee’s explanation is, again, a quarrel with the board’s weighing of the evidence.

¹⁹ If the Court were to conclude otherwise, remand would be the proper resort to allow

Mr. Bee points to four pieces of evidence he believes merit persuasive effect in light of the Kurta memo. He fails, however, to explain the memo's applicability other than the unconnected and unsupportable conclusion concerning those four pieces of evidence, complaining that "the Board discounted nearly all evidence that Mr. Bee's PTSD and TBI contributed to his discharge or dismissal, including Mr. Bee's written testimony, his wife's written testimony, the in-depth examination provided by board certified psychiatrist Dr. Michael Blumenfield, and Dr. Vogel's neuropsychological examination and the consequent VA rating decision." ECF 47 at 22. Without further illumination or discussion of any kind, Mr. Bee's brief cites pages "AR 479–80, 483" as the site of the offending board work. There, the board provided its assessment of Dr. Blumenfield's report, which contained no trace of ill-liberality, concluding, "while the Board did not doubt Dr. Blumenfield's credentials or qualifications, it did not find his report to be particularly persuasive." AR 479.

3. The board's analysis included these steps: (1) acknowledging the report "confirmed" the diagnosis of PTSD and TBI; (2) observing that it provided "nothing" to confirm Mr. Bee could not perform his duties, noting that Dr. Blumenfield "apparently did not review any contemporaneous records describing your performance of duties during the period in question" and that, "[r]ather, he claimed to have reviewed only the medical records and a 25-page summary of the records which were provided to him (which the Board also reviewed and included in the summary above), which as stated above clearly do not support these conclusions"; (3) observing that the report's conclusions "were not explained or supported by any analysis," and it was "not even clear to the Board that he knew the duties of a Marine rifleman or understood and applied the standard for a finding of medical unfitness." AR 479.

the board to assess the evidence in light of the Court's conclusions.

The board then contrasted Dr. Blumenfield's reporting to "the numerous medical providers who observed, treated, and assessed you during the relevant period in question, had the professional, ethical, and regulatory obligations discussed above," including comparing their observations from their contemporaneous vantage point compared to the "opinion offered by Dr. Blumenfield almost five years after your discharge without the benefit of any direct observation of you during the relevant time frame." *Id.*

Mr. Bee adds, with no apparent reference to the board's actual analysis: "Crucially, the statute also clarifies that the Board 'shall' 'review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal.'" ECF 47 at 22. Even a cursory review of the board's decision, however, shows that the board not only accepted his TBI and PTSD diagnoses; the board's sole focus was determining whether these conditions rendered Mr. Bee unfit, the sole basis for the disability discharge he sought.

4. Mr. Bee also relies on *Doyon v. United States*, 58 F.4th 1235, 1238 (Fed. Cir. 2023), which held that the Kurta memo (Memo) required that the board in assessing discharge upgrades apply liberal consideration both to the characterization of service (Mr. Bee was discharged with an honorable discharge, hence no upgrade was available there) and the DD-214 (discharge certificate) "Narrative Reason For Separation" block, Block 28. Mr. Bee's narrative reason block read "FORCE SHAPING-VSP, referring to the Voluntary Separation Program he elected to enter, which resulted in his voluntary separation."²⁰ There is no quarrel we detect with

²⁰ He was not, however, barred from reentry, as his reenlistment code, Block 27, was RE-1A (Eligible for reenlistment). *See* Marine Corps Order P1900.16F Ch 2, Marine Corps Separation and Retirement Manual (June 6, 2007 (has since been updated)), Appendix I. The Marine Corps granted Marines and RE-1A reenlistment code under the following conditions, "No restriction to reenlistment. Meets all prerequisites, includes those Marines discharged at

the accuracy of that statement. And while we understand that Mr. Bee prefers that that statement refer to a disability, in order to reach that conclusion, the parties agree that the Navy would first have had to conclude that Mr. Bee was not fit for active duty, which, as shown, it reasonably did not. Moreover, Mr. Bee misunderstands the Kurta Memo's application.

Generally, the Memo applies to "invisible wounds," such as PTSD. *See* Kurta Memo cover letter. Here, the contemporaneous and board analyses began with the fact that Mr. Bee had been diagnosed with PTSD so there was nothing invisible to the board or unexamined by its analysis. The point of the Memo is to determine whether it should "excuse," "mitigate," or "outweigh" some circumstance that caused the military service to discharge him. Memo at 2. The Memo identifies 10 "concepts" that liberal consideration "includes," which although not exclusive, make clear that what is to be excused is the service member's misbehavior for lack of evidence or contemporaneous understanding. *See, e.g.*, Memo at 26.k ("Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances"). Here, there is none such and there is nothing negative about Mr. Bee's behavior that prompted his discharge.

The principal concept Mr. Bee seems to call on (discussed in three of the ten) concerns the treatment of evidence, which we have addressed above.²¹ Generally, the Memo states, "[s]ome circumstances require greater leniency and excusal from normal evidentiary burdens."

EAS while pregnant who would otherwise be eligible."

²¹ Two are inapplicable on their face. One concerns sexual assaults, another concerns conditions for awarding an honorable discharge, also referring to misconduct. *See* Memo at 4 ¶¶ 26.c, h, and i.

Memo at 26.a. Two refine the concept somewhat: one (26.b) explaining “[i]t is unreasonable to expect the same level of proof for injustices committed years ago”; the other (26.f) stating that reviews “should not condition relief on the existence of evidence that would be unreasonable or unlikely under the specific circumstances of the case.”

Three concepts explicitly deal with the assessment of misconduct. Memo at 4 ¶¶ 26.h (concerning sexual assaults), i, k. Another (26.e) appears to, cautioning that mental health conditions “inherently affect one’s behaviors and choices causing veterans to think and behave differently than might otherwise be expected.” As noted, misconduct is not at issue and Mr. Bee offers no other explanation of these concepts’ applicability.

Three concepts (26.d, j, k) concern the lack of a diagnosis, not applicable here.

Finally, 26.g cautions that veterans with mental health conditions “may have difficulty presenting a thorough appeal for relief because of how the asserted condition or experience has impacted the veteran’s life.” That is inapplicable here, given the legal support provided.²²

In any event, *Doyon* did *not* hold that the Kurta Memo applies to *fitness determinations*. See 58 F.4th at 1248 (“This unfitness dispute between the parties is not properly before us at this stage”); *id.* at 1244 (“We offer no opinion as to whether liberal consideration would entitle Mr. Doyon to a correction of his DD-214 form or to disability retirement.”). Thus, neither *Doyon* nor the Kurta memo add any gloss to Mr. Bee’s argument.

5. Mr. Bee also asserts the board “does not even reference or acknowledge” his 70 percent disability rating, ECF 47 at 39, while also pointing to the board’s explicit acknowledgement of Mr. Bee’s VA disability rating, but arguing that the board “dismissed the

²² 10 U.S.C. § 1552(h) adds no particulars that change this analysis and Mr. Bee does not identify any.

VA evaluation” on insufficient grounds, partially quoting the board’s explanation. ECF 47 at 22. In doing so, the argument simply excises the remainder of the specific board comment it criticizes, in which the board assessed the VA evaluation’s contribution to a fitness determination, noting it does not contain “a requirement that unfitness for military duty be demonstrated.” AR 2. The critique also ignores the rest of the board’s discussion of the VA determination, AR 2-3, as it does the board’s further assessment of the weight of the report in its reconsideration decision, AR 8; 10-18.

Consequently, the support Mr. Bee purports to draw from *Valles-Prieto v. United States*, 159 Fed. Cl. 611, 618 (2022), pointing to its statement that the board “should have considered plaintiff’s disability rating as relevant evidence in determining whether plaintiff was unfit for duty,” ECF 47 at 22, is no support at all.

For the same reason, Mr. Bee’s reliance on *Ferrell v. United States*, 23 Cl. Ct. 562, 571 (1991), fails to fortify his argument. As we have explained above, the issue here is not whether a VA exam may be relevant to a disability claim, but whether the weight attached to it by the board was arbitrary and capricious. In *Ferrell*, the Court reversed because the VA post-discharge medical evidence was “either not discussed by the various boards, or dealt with incorrectly.” 23 Cl. Ct. at 571. Here, by contrast, the board did consider the VA’s determination dissected it fully and, upon an extensive analysis, simply found it less probative than contrary evidence – all the while fully accepting Mr. Bee’s in-service and post service PTSD diagnoses.

In doing so, the board’s approach was no different than that sanctioned by this Court in *O’Hare v. United States*, 155 Fed. Cl. at 377, where the Court explained:

[O’Hare’s] VA disability rating does not prove Mr. O’Hare was unfit because VA ratings and naval fitness determinations are separate evaluations that serve distinct purposes. “Disability rating determinations by the Navy are ‘designed to determine unfitness to

perform the duties of office In contrast, the VA determines disability ratings based upon an evaluation of whether and how an individual's capacity to perform in the civilian world is diminished by a disability.” *Lewis v. United States*, 476 F. App'x 240, 245 (Fed. Cir. 2012) (alterations in original) (quoting *Champagne v. United States*, 35 Fed. Cl. 198, 211–12 (1996)).

The Federal Circuit rejected a nearly identical argument in *Heisig*: “[T]he fact of a 40 percent disability rating under the Veterans Administration's standards did not mandate a similar finding under service standards, but was evidence to be, and which was, considered along with all other evidence.” 719 F.2d at 1157.

See also Campbell v. United States, 2022 WL 2824674, at *3 (Fed. Cir. 2022) (contrasting a fitness determination from a VA disability rating); *Mazarji v. United States*, 164 Fed. Cl. 298, 309 (2023) (“The DOD measures disability for the purpose of determining whether an individual is fit for continued service. If it finds the servicemember is not fit, he is retired or discharged, and the percentage he is assigned reflects deferred compensation for a career of service. Put differently, the DOD’s disability rating represents a snapshot of the service member's condition at the time of separation from the service.”) (cleaned up).

F. Mr. Bee’s “Critical Factual Errors” Are Only A Difference Of Opinion

1. Mr. Bee’s arguments at ECF 47 at 33-39 are a fusion of arguments made earlier in his brief and already addressed here – a fusion built on Mr. Bee’s assertions that the board’s conclusions are erroneous, the duties it examined are inapt, the board “ignored” evidence, his experts’ views should have been afforded greater weight, and on allegations of contradictory board statements built on cherry-picked statements and by simply ignoring the board’s explanations. None demonstrates that the decision reached lacked substantial evidence or was arbitrary.

For example, the following argument is a hat trick of these techniques. First, Mr. Bee opines that the board’s statement that “nothing in [Mr. Bee’s] medical history . . . would lead

anyone, medically trained or otherwise, to believe that . . . any of [his] conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to [his] office, grade, rank or rating” is “erroneous.” ECF 47 at 33. Second, he ignores the point of the statement, not as he seems to assume, that no one would think he did not have a PTSD diagnosis, but the ample evidence to the contrary that his condition did not negatively affect his *performance*. Third, he purports to build his case by cherry-picking the board’s fair observation that a 2010 neuropsychological evaluation “found significant impairment to [Mr. Bee’s] learning functions” was “potential exception to this statement.” He purports to polish off the point by dismissing the board’s recitation of evidence evidencing a later “improvement” in his condition and 28 months of subsequent performance, by opining that is not enough to overcome a thorough exam and resort to the inapt duties argument. ECF 47 at 34-35.

2. Mr. Bee also repeats, now labeling as “critical errors,” arguments stated elsewhere in his brief, *e.g.*, that the FMTB-E duties were inapt (they did not involve combat) (*id.* at 34, 36), that the board should have afforded more weight to Dr. Blumenfield’s *10-year post-discharge* report (*id.* at 38-9). We see no reason to repeat what we have already said in these regards, other than to note the board fully considered these arguments and they do not detract from the substantial evidence supporting the board’s decision.

3. Mr. Bee also quarrels with the board’s application of the factors set forth in DoDI 1332.38, § E3.P3.2.2.1–2, which we have fully discussed – here, debating whether Mr. Bee’s condition posed “a decided medical risk to the health of the member or to the welfare [or safety] of other members were the member to continue on active duty” and whether the service member’s “medical condition imposes unreasonable requirements on the military to maintain or protect the member.” ECF No. 47 at 43. These are inherently military decisions, the board

expressly considered these factors, and the board explained the performance evidence that led the board to its conclusions. *See* AR 486 & nn. 35–36.

Nonetheless, Mr. Bee complains that the board’s error ignores “major factors” because it understated his limited duty status by two months, ECF 47 at 35, and did not recognize he had at least seven medical encounters related to his PTSD and TBI, not counting his post-service exams and those from three years before his discharge. ECF 47 at 35 (PTSD (citing AR 179–81, 426–27, and his amended complaint)). The medical record, however, indicates that Mr. Bee’s LIMDU status was terminated in October 2010 at his request, AR 476; Mr. Bee’s own application states it ended in “September 2010.” AR 37. And, how the brief calculates its seven encounters is not clear, but of little moment, in light of the fact the board acknowledged his in-service and post-service diagnoses.

4. Primarily, Mr. Bee’s argument, here and elsewhere, is based on the medical side of the decision, emphasizing that he had the PTSD diagnosis, while disregarding the *effect* of his condition, which he ably managed. ECF 47 at 36-38. Thus, the brief stresses Mr. Bee’s conditions in service, including VA Dr. Vogel’s observation of them, and Mr. Bee’s report of related symptoms. But the board never doubted the existence of his diagnosis or its symptoms; it was their effect that underpins its conclusions, which fully considered and fully addressed all the evidence Mr. Bee alleges it ignored or improperly discounted. *See* AR 470 (listing all documentary evidence considered); AR 474–78 (service medical records); AR 479, 82 (Dr. Blumenfield’s 2018 post-service psychiatric assessment).

CONCLUSION

For these reasons, we respectfully request that the Court dismiss the complaint for lack of jurisdiction. In the alternative, we request that the Court grant our motion for judgment upon the administrative record.

Respectfully submitted,

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendants.

Case No. 21-1970
Judge Philip J. Hadji

**PLAINTIFF WILLIAM OLAS BEE'S REPLY IN SUPPORT OF MOTION FOR
JUDGMENT ON THE ADMINISTRATIVE RECORD
AND RESPONSE TO DEFENDANT'S MOTION TO DISMISS
AND CROSS-MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD**

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TABLE OF ABBREVIATIONS

Abbreviation	Full Name
DES	Disability Evaluation System
DODI	Department of Defense Instruction
FITREP	Fitness Report
GAF	Global Assessment of Functioning
Infantry T&R Manual	Infantry Training and Readiness Manual
LIMDU	Limited Duty
MCO	Marine Corps Order
MOS	Military Occupational Specialty
MOS Manual	Marine Corps Order 1200.17
NAVMC	Navy and Marine Corps
PEB	Physical Evaluation Board
PMOS	Primary Military Occupational Specialty
PTSD	Post-traumatic stress disorder
RCFC	Rules of the United States Court of Federal Claims
SECNAVINST	Secretary of the Navy Instruction
TBI	Traumatic brain injury
VA	Veterans Administration

PRELIMINARY STATEMENT

Plaintiff William Olas Bee respectfully requests that this Court deny the Government's motion to dismiss and cross-motion for judgment on the administrative record. ECF No. 54 ("Def. Mot."). Mr. Bee also requests that this Court grant his Motion for Judgment on the Administrative Record. ECF No. 47 ("Bee Mot.").

The Government's response confirms that there is no dispute over a number of critical issues: after several deployments, Mr. Bee suffered head injuries in combat that caused him to develop traumatic brain injury ("TBI") and post-traumatic stress disorder ("PTSD"); those injuries rendered Mr. Bee unable to perform the combat-related Infantry Unit Leader duties he had been carrying out for years beforehand; because of his injuries, Mr. Bee was assigned to a nonoperational billet with the Navy outside his Marine Corps Infantry Unit Leader rating, where he remained for the rest of his military service; Mr. Bee then separated from the Marine Corps without receiving an evaluation under the Disability Evaluation System ("DES"); to this day, Mr. Bee continues to suffer from his combat-induced TBI and PTSD. Despite this shared understanding, the Government nonetheless maintains that Mr. Bee's TBI and PTSD did *not* render him unable to perform "the duties of [his] office, grade, rank or rating," i.e., did not render him "unfit" and thus deserving of medical retirement. The Government is wrong. Mr. Bee bravely served the country for years as a combat Marine, he was seriously and permanently injured in combat, and those injuries were so severe that he was unable to return to the combat-related duties of an Infantry Unit Leader before his separation. Mr. Bee was unfit and should have been medically retired. The Government's various efforts to obscure that straightforward outcome are unavailing.

First, the Government presses an untenable jurisdictional argument. Instead of accepting the general rule that disability entitlement claims accrue when a military corrections board denies

a service member's claim, the Government argues that Mr. Bee's claim is time-barred under a narrow exception to the rule. But the Government is wrong on both the law and the facts. That is likely why the Government previously conceded jurisdiction in this case when it *asked* this Court to exercise jurisdiction over this matter to order a remand.

Second, the Government attempts to explain away the Board's failure to use the correct legal standard, liberal consideration, when it denied Mr. Bee's petition. The Government first suggests that Mr. Bee forfeited this argument by failing to raise it before the Board. But Mr. Bee did not (and could not) forfeit the requirement that the Board conduct its own review according to the law. From there, the Government has *no argument* that the Board did in fact apply liberal consideration. The most it can muster is the assertion that the Board's review was not "ill-liberal[]." Whatever that means, it is not the controlling legal standard. Liberal consideration requires the Board to weigh the evidence *differently* when reviewing a petition for medical retirement based on PTSD or TBI, including by making a number of specific presumptions in favor of the petitioner. It did not do that here, and that alone is a sufficient basis to vacate its decision. What is more, the Board's reasoning directly flouted the basic principles of liberal consideration, making clear that Mr. Bee would have received the requested relief had the Board applied the correct standard.

Third, under any standard, the Government is unable to justify the Board's erroneous decision. Mr. Bee was clearly unfit to perform the duties reasonably required of his office, grade, rank, or rating at the time of his discharge. The Government's various responses misstate Mr. Bee's basic arguments, ignore controlling regulations, and rely (by necessity) on the Board's unsound "garrison environment" standard, which has no basis in law, regulations, or precedent. In short, the Government has no persuasive answer for how after his injuries Mr. Bee could have

possibly continued performing the combat-related duties that are regularly required of all Infantry Unit Leaders regardless of duty station.

Given the egregiousness of the Board's error, this Court should not only vacate its decision but also specifically order the Board to grant Mr. Bee the medical retirement that he has wrongly been denied for years.

ARGUMENT

I. THE COMPLAINT IS TIMELY

The Government's brief starts off on the wrong foot, putting forward a meritless jurisdictional argument. Def. Mot. at 16–18. It contends that this lawsuit is untimely based on a narrow exception to the normal rule governing the statute of limitations for disability entitlement cases like this one. The Government is wrong on both the law and the facts, as it effectively conceded when it previously *asked* this Court to exercise jurisdiction over this case in order to facilitate a remand to the Board.

In disability entitlement cases, the Tucker's Act's six-year statute of limitations generally begins to run when the appropriate board issues a final decision on a service member's claim. *See Real v. United States*, 906 F.2d 1557, 1560 (Fed. Cir. 1990). The Government acknowledges this "general rule." Def. Mot. at 16. Here, the Board first denied Mr. Bee's petition on August 5, 2019, AR 3, and Mr. Bee filed suit on October 6, 2021, ECF No. 1. Following remand, the Board denied Mr. Bee's petition a second time on May 5, 2023, AR 488, and Mr. Bee filed his amended complaint on July 7, 2023, ECF No. 42. There is no dispute that, under the general rule, the Complaint is timely.

The Government seeks to avoid that rule, however, by invoking a rare exception under *Real*, whereby a disability claim may accrue on the date of discharge if "the veteran's knowledge of the existence and extent of his condition at the time of his discharge was sufficient to justify

concluding that he waived the right to board review of the service's finding of fitness by failing to demand a board prior to discharge." 906 F.2d at 1562. That exception plainly does not apply here.

In *Real*, the Federal Circuit determined that a military disability claim may accrue at discharge when a veteran knows that he is entitled to medical retirement but knowingly waives his right and forgoes disability review prior to discharge. As the Federal Circuit subsequently made clear in *Chambers v. United States*, the *Real* exception applies only when the service member *actually knew* that he was entitled to disability retirement but waived that entitlement. 417 F.3d 1218, 1226 (Fed. Cir. 2005) (explaining that such a waiver can be found "when the service member has sufficient actual or constructive notice of his disability, and hence, *of his entitlement to disability retirement pay, at the time of discharge*") (emphasis added). The Court explained that "*Real* did not fashion a rule, as the government suggests, that a service member's claim accrues when he learns of his disabling condition," and "such a rule would be untenable, given that a military board must determine eligibility for disability retirement before such a claim accrues." *Id.*; see also *Johnson v. United States*, 123 Fed. Cl. 174, 179 (2015), *aff'd*, 675 F. App'x 1011 (Fed. Cir. 2017) (stating that *Chambers* set forth the "precedential formulation of the *Real* exception to the general accrual rule for disability retirement claims" and holding "cases which pre-date *Chambers* . . . to be inapposite" to the analysis "because the crucial interpretation of the *Real* exception provided by *Chambers* did not yet exist").

Thus, the question before the Court is *not* whether Mr. Bee had notice of his diagnoses of TBI and PTSD, but whether the record establishes that, at the time of his April 2013 discharge, he knew that he was *entitled to a disability retirement due to a permanent disability*. *Chambers*, 417 F.3d at 1226; *Johnson*, 123 Fed. Cl. at 179 ("[T]he question is whether [the plaintiff] knew, [at the time of discharge], that 'he was entitled to disability retirement due to a permanent disability that

was not a result of his intentional misconduct and was service-connected.” (quoting *Chambers*, 417 F.3d at 1226)); *Colon v. United States*, 71 Fed. Cl. 473, 482 (2006), *aff’d sub nom. Acevedo v. United States*, 216 F. App’x 977 (Fed. Cir. 2007) (similar). Since *Chambers* clarified the narrow scope of the *Real* exception, this Court has repeatedly declined to find the exception satisfied.¹

The same result should occur here. The record does not support the Government’s claim that, at the time of his April 2013 separation, Mr. Bee was aware of the “extent of his condition,” much less that due to his conditions he was entitled to disability retirement. Indeed, there is no evidence that the Navy indicated the availability of DES processing to Mr. Bee or that Mr. Bee otherwise knew that the Navy was required by law to provide him with DES processing. At the time of discharge Mr. Bee had no reason to know that he suffered from permanent, duty-limiting PTSD or TBI. That is because the Marine Corps avoided placing him on limited duty by assigning him to a billet outside his office, grade, rank or rating and then cleared him for separation despite noting “headache,” “dizziness, vertigo, and lightheadedness,” “[m]emory lapses or loss,” “[g]ait abnormality,” “[a]nxiety, emotional lability, and sleep disturbances,” “delayed post-traumatic stress disorder,” “major depression, single episode,” “difficulty in walking,” and “history of traumatic brain injury.” AR 428, 431. Moreover, although Mr. Bee’s VA physical examination was conducted shortly before his discharge, he did not receive the results of the examination—

¹ See, e.g., *Colon*, 71 Fed. Cl. at 481–82 (finding “insufficient evidence in the administrative record to indicate that [the plaintiff] possessed” knowledge of his entitlement to disability retirement due to a permanent disability where he “neither requested nor was offered consideration by a disability board prior to discharge with respect to whether he was eligible to be retired for disability”) (internal quotation marks omitted); *Van Allen v. United States*, 70 Fed. Cl. 57, 62 (2006), *aff’d*, 236 F. App’x 612 (Fed. Cir. 2007) (finding that “on the record before the court it cannot be concluded that, upon his separation, plaintiff possessed the level of knowledge required to cause a claim for disability retirement pay to accrue at that point” even where the plaintiff “state[d] that he requested disability pay eligibility during the administrative phase of [his] release from active duty”) (internal quotation marks omitted); see also *Gilbreth v. United States*, 94 Fed. Cl. 88, 94-95 (2010); *O’Hare v. United States*, 155 Fed. Cl. 364, 373 (2021).

which for the first time established that he was 70% disabled by PTSD and 70% disabled by TBI—until after his discharge. Put simply, “the record is bereft of any evidence” that Mr. Bee knew the extent of his disabilities or understood the criteria and requirements for disability retirement at the time of his separation, much less that he knew he would *qualify for disability entitlement*. *Chambers*, 417 F.3d at 1226. Nor does the Government cite any case ever applying the *Real* exception to circumstances like this.

The Government’s position is also contrary to the regulatory framework that places the onus on *military officers* to recommend members for disability evaluation. *See* Secretary of the Navy Instruction (“SECNAVINST”) 1850.4E encl. 1 § 1005 (“Accordingly, line commanders, commanding officers of [medical treatment facilities] and individual medical and dental officers shall promptly identify for evaluation by Medical Boards and appropriate referral to the PEB . . . those members presenting for medical care whose physical or mental fitness to continue naval service is questionable.”). Nor does it appear that service members even had the *option* to self-refer for DES processing at the time of Mr. Bee’s separation in 2013. The Government cites nothing to that effect. *See* Def. Mot. at 12–14; *see also* Department of Defense Instruction (“DoDI”) 1332.38 encl. 3, § E3.P1.6.1 (“Service members *shall be referred* into the DES as soon as the probability that they will be unable to return to full duty is ascertained and optimal medical treatment benefits have been attained.” (emphasis added)); *id.* at § E3.P1.2.3 (stating that physical examinations by military medical providers shall “state whether each [diagnosed] condition *is cause for referral into the DES*” (emphasis added)); *see also* *Valles-Prieto v. United States*, 159 Fed. Cl. 611, 615 (2022) (stating that “[s]ervice members cannot self-refer into the IDES,” the successor disability processing system to the DES, “but the military branches are required to refer eligible [s]ervice members who meet the referral criteria for IDES”).

All of this is likely why the Government *conceded* jurisdiction previously in this case and this Court (correctly) exercised jurisdiction over the matter. Prior to the Court’s remand, the parties briefed this jurisdictional issue before the Court. *See* ECF Nos. 23, 25. The Court then held a hearing where the parties addressed the jurisdictional issue. *See* ECF No. 27; Minute Entry (July 25, 2022). Afterward, the Government jointly moved with Mr. Bee for this Court to exercise jurisdiction over the case and remand it to the Board for reconsideration. *See* ECF No. 35. Specifically, the Government and Mr. Bee asked the Court to remand “pursuant to RCFC 52.2,” and explained that “Rule 52.2(a) provides that “[i]n any case *within its jurisdiction*, the court, on motion or on its own, may order the remand of appropriate matters to an administrative or executive body or official.” (emphasis added). *Id.* In other words, the Government conceded that this Court has jurisdiction, which necessarily means that the *Real* exception does not apply. This Court then exercised jurisdiction by issuing the remand order. *See* ECF No. 36.

In short, this Court plainly has jurisdiction and should reject the Government’s contention otherwise.

II. MR. BEE’S PETITION SHOULD HAVE BEEN EVALUATED—AND GRANTED—UNDER THE LIBERAL CONSIDERATION STANDARD

The Government gives short shrift to the key legal standard that the Board should have applied when reviewing Mr. Bee’s petition: Liberal consideration. The Board undisputedly failed to apply that standard, and had it applied liberal consideration, it would have granted medical retirement. Because the Board failed to apply the correct standard, its decision cannot stand.

A. Mr. Bee’s Petition Should Have Received Liberal Consideration

1. The Liberal Consideration Standard

Under the Board’s enabling statute, claims “for review of a discharge” relating to PTSD or TBI must be reviewed “with liberal consideration to the claimant that [PTSD or TBI] . . .

potentially contributed to the circumstances resulting in the discharge.” 10 U.S.C. § 1552(h)(1)-(2). This statutory requirement codifies what the Department of Defense’s (“DoD”) binding guidance in the “Hagel Memo” and “Kurta Memo” has recognized for a decade. Given advances in the science of mental health, “records at the time of discharge often lack substantive information about mental health conditions for such ‘invisible wounds.’” *Harrison v. Kendall*, --- F. Supp. 3d ---, 2023 WL 3016277, at *15 (E.D. Va. Apr. 20, 2023). As a result, “liberal consideration is required.” *Id.* According to the 2014 Hagel Memo, this means liberally considering service-era assessments in light of present-day PTSD diagnoses, as well as service-era “symptoms of what is now recognized as PTSD or a PTSD-related condition.” Chuck Hagel, Memorandum for Secretaries of the Military Departments, Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Sept. 3, 2014) (“Hagel Memo”). The more recent 2017 Kurta Memo expanded on this guidance, clarifying the practical application of liberal consideration. *See* Anthony Kurta, Memorandum for Secretaries of the Military Departments, Clarifying Guidance to Military Discharge Review 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 (Aug. 25, 2017) (“Kurta Memo”).

The statute and DoD guidance—their plain meaning, structure, purpose, and legislative history—all confirm that the Board needed to give liberal consideration here. If there were any doubt, the Federal Circuit recently held that liberal consideration applies to requests for disability retirement. *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023). In *Doyon*, the Government had argued that liberal consideration was limited to cases where a service member seeks a record correction to excuse or mitigate a discharge based on *misconduct*, not discharges seeking *medical*

retirement. The Federal Circuit expressly rejected that position, explaining that liberal consideration applies to “*any petition seeking discharge relief*,” which includes requests for “disability retirement.” *Id.* at 1243; *see also id.* at 1246-46. Thus, in the language of the Kurta Memo, a petition seeking discharge relief in the form of medical retirement is one way that liberal consideration may “excuse or mitigate” a discharge.

The liberal consideration standard fundamentally alters how the Board is supposed to conduct its review of a petition like Mr. Bee’s. For example, VA findings that PTSD is service-connected, “while not binding on” DoD, are “persuasive evidence that the condition existed . . . during military service.” Kurta Memo at 2 ¶ 14. “Absent *clear evidence* to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist” must receive liberal consideration and “is evidence that the veteran had a condition that may excuse or mitigate the discharge.” *Id.* (emphasis added).

Liberal consideration is not limited to proving the existence of a compensable disability in service. In situations like Mr. Bee’s, the Board also must liberally consider the nature and extent of that disability as evidence of possible unfitness. Liberal consideration provides that “[i]t is unreasonable to expect the same level of proof for injustices committed years ago when . . . TBI [and] PTSD . . . were far less understood than they are today” because: (1) “[m]ental health conditions, including PTSD [and] TBI. . . are often undiagnosed or diagnosed years afterwards, and are frequently unreported”; and (2) veterans discharged before PTSD and TBI were well-understood may be “the victim[s] of injustice” because their commanders and doctors were not “fully informed of such conditions.” *Id.* at 3-4.

Military correction boards must also carefully consider sources outside the service record when assessing the role of PTSD or TBI in a discharge. “The veteran’s testimony alone, oral or

written, may establish” the existence of PTSD or TBI *and*, particularly critical here, “that the condition or experience excuses or mitigates the discharge”—i.e., the role PTSD or TBI played in how and why the discharge occurred. *Id.* at 2.

Case law confirms that “the driving force behind” the Hagel and Kurta Memos was that PTSD and TBI have not always been well understood or recognized by the military. *Harrison*, 2023 WL 3016277, at *15. As a result, the Board cannot rely too heavily on often-“deficient” service records; nor can it discount present-day assessments just because they are temporally distant from service. *Id.* at *17; *see Labonte v. United States*, No. 18-1784C, 2023 WL 3197825, at *9 (Fed. Cl. May 2, 2023); *Hassay v. United States*, 150 Fed. Cl. 467, 480 (2020) (citing Hagel Memo to hold that a medical opinion is “no less relevant because it is based on . . . treatment . . . many years after [the veteran] left the service”).

2. The Government’s Forfeiture Argument Is Wrong

The Government appears to argue that Mr. Bee forfeited application of liberal consideration by failing to raise it before the Board. *See* Def. Mot. at 40. That argument falls flat. Not only has the Government effectively waived its forfeiture argument, Mr. Bee was not required to exhaust the issue before the Board, and, in any event, any forfeiture should be excused.

First, the Government waived its preservation argument by failing to sufficiently make the argument before this Court. The Government merely asserts that “Mr. Bee himself, though represented by able counsel, never presented this argument to the board.” *Id.* It does not make any argument or cite any case to support a forfeiture. That failure amounts to clear waiver, or at minimum forfeiture, of the Government’s preservation argument. *In re Google Tech. Holdings LLC*, 980 F.3d 858, 862 (Fed. Cir. 2020).

Second, Mr. Bee was not required to press the liberal consideration argument before the Board in order to raise it in this lawsuit. The Government’s argument raises a question of issue

exhaustion, and the “requirements of administrative issue exhaustion are largely creatures of statute.” *Sims v. Apfel*, 530 U.S. 103, 107 (2000). Although some statutes expressly limit judicial review to the arguments raised before the agency, *see, e.g., id.* at 107–08, the statutes authorizing judicial review here do not, *see* 10 U.S.C. §§ 1552, 1201; 28 U.S.C. § 1491. Absent such a statutory requirement, the “basis for a judicially imposed issue-exhaustion requirement is an analogy” to general appellate preservation principles—and the propriety of imposing such a requirement “depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding.” *Sims*, 530 U.S. at 108–09. The principal factor for assessing whether the analogy to “normal adversarial litigation” holds is whether the administrative proceeding is *adversarial*: If it is, “the rationale for requiring issue exhaustion is at its greatest;” if not, “the reasons for a court to require issue exhaustion are much weaker.” *Id.* at 110 (citation omitted).

Imposing an issue-exhaustion requirement on Mr. Bee’s liberal consideration argument would run afoul of *Sims*. Like the Social Security proceedings at issue in *Sims*, the Board’s proceedings are nonadversarial. *See Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974); *Caddington v. United States*, 147 Ct. Cl. 629, 631–32 (1959). Given the fundamental difference between the Board proceedings and “normal adversarial litigation,” *Sims*, 530 U.S. at 109, it would be improper to impose an issue-exhaustion requirement here.

It would be particularly inappropriate to impose such a requirement here because “the error [the] party seeks to challenge before the Court was committed by the *Board itself*, rather than an error committed by the agency whose action the Board is reviewing.” *Hassay*, 150 Fed. Cl. at 483 & n.15 (emphasis added) (rejecting the contention that plaintiff waived the argument for liberal consideration under the Hagel and Kurta Memos by failing to raise it to the Board). Put differently,

there was no liberal consideration error to preserve until after the Board issued its decision. Mr. Bee was not required to anticipate that the Board would add this new legal error on top of his illegal discharge. Rather, he was entitled to “expect that an administrative body charged with determining the fitness of a service member knows the legal standard to be applied.” *Kelly v. United States*, 157 Fed. Cl. 114, 129 (2021).

Finally, and in any event, even if Mr. Bee forfeited the liberal consideration argument, the forfeiture should be excused. This Court has “consistently held that waiver is a matter of discretion” and “not . . . an inflexible rule.” *Apple Inc. v. Qualcomm Inc.*, 992 F.3d 1378, 1382 (Fed. Cir. 2021) (collecting cases). “While there is no general rule” for when this Court will excuse a waiver or forfeiture, it has exercised its discretion to do so when, for example, the issue is “fully briefed,” no party will be prejudiced, and the issue is relevant to other pending cases. *Id.* (citation omitted) (excusing waiver for these three reasons). Also relevant is whether the issue is “a purely legal question.” *Bozeman Fin. LLC v. Fed. Rsvr. Bank of Atlanta*, 955 F.3d 971, 974 (Fed. Cir. 2020). Ultimately, this Court exercises its discretion to excuse a waiver or forfeiture when “circumstances indicate that it would result in basically unfair procedure.” *Apple*, 992 F.3d at 1382 (citation omitted). Those factors all weigh in favor of excusing any forfeiture here.

3. The Board Did Not Apply Liberal Consideration To Mr. Bee’s Petition

The Board undisputedly did not apply liberal consideration to Mr. Bee’s petition. The Government does not dispute that. *See* Def. Mot. at 41. Instead, it asserts that the Board’s decision contained no “no trace of ill-liberality.” *Id.* That phrase is meaningless, as the Board’s decision contains no trace of liberality, either. In any event, an “ill-liberal” review standard is contradictory to the remedial nature of Section 1552, the Board’s enabling statute. *See Caddington*, 147 Ct. Cl. at 631–32 (Section 1552 “is remedial in nature,” and “imposes on the Secretary the twofold duty

to properly evaluate the nature of any error or injustice and, in addition, to take such corrective action as will appropriately and fully erase such error or compensate such injustice”).

Whatever the Government meant by “ill-liberality,” there is no question that the Board did not apply the affirmative presumptions and requirements of liberal consideration. That is plain from the Board’s decision, and the Government never claims otherwise.

B. Had The Board Properly Applied Liberal Consideration, Mr. Bee Should Have Been Granted Relief

Under a proper application of the liberal consideration standard, the Board’s reasoning and weighing of the evidence would have been fundamentally different. That is clear in numerous respects.

For one, the Board would have afforded substantially more weight to the report from psychiatrist Dr. Michael Blumenfield, Dr. Vogel’s neuropsychological examination, and the consequent VA rating decision. That VA rating decision assigned Mr. Bee a 70% disability rating due to PTSD based on its finding of “a 50 percent impairment due to the post traumatic stress disorder, primary insomnia, generalized anxiety disorder, panic disorder with agoraphobia, major depressive disorder and 50 percent due to traumatic brain injury,” and a 70% disability rating due to TBI based on its findings of “a 50 percent impairment due to the traumatic brain injury and 50 percent due to the mental disability.” AR 104–15; AR 479–80, 483; Bee Mot. at 22. That the Board would have weighed this evidence differently under the liberal consideration standard is far from “speculative,” as the Government repeatedly asserts. Liberal consideration expressly requires giving such evidence “persuasive” weight that “the condition existed . . . during military service,” and “[a]bsent *clear evidence* to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist” “is evidence that the veteran had a condition *that may excuse or mitigate the discharge.*” *Id.* (emphasis added); Kurta Memo at 2. And as *Doyon* makes clear,

these principles apply with equal force to a petition seeking any form of discharge relief, including medical retirement. *See supra* II.A.1. The Board never considered this evidence under that standard.

Instead, the Board affirmatively discounted Mr. Bee's evidence based on the precise, unsound rationale that liberal consideration was intended to counteract. For example, the Board discounted the Blumenfield report because it was later in time than Mr. Bee's discharge, i.e., it was not contemporaneous. AR 479. The Government repeats that attack in its brief. Def. Mot. at 41-42; *see also id.* at 47 (arguing that the Board was not required to "afford[] more weight to Dr. Blumenfield's 10-year post-discharge report" (emphasis in original)). That is exactly the kind of reasoning that liberal consideration forbids. *See Harrison*, 2023 WL 3016277, at *16 (boards cannot "decline to follow" opinions because they were "based on 'evidence from decades after the relevant period'").

The Board also improperly dismissed evidence that was based on the testimony of Mr. Bee and his personal witnesses. *See* AR 483. The Kurta Memo is clear that the Board must carefully consider the "veteran's testimony, which "alone" can support a diagnosis and petition for discharge relief. Kurta Memo at 2.

Rather than defend the Board's review under the liberal consideration standard, the Government instead attempts to redefine the standard itself. For instance, the Government appears to be under the misimpression that liberal consideration applies only to the determination of whether PTSD or TBI existed. *See* Def. Mot. at 42. But *Doyon* expressly rejected that position. It held that liberal consideration applies not only to the existence of the condition, but also to its extent, when considering petitions for record corrections asserting that a service member should have been discharged as unfit and medically retired. *See* 58 F.4th at 1243.

The Government also asserts that liberal consideration would not have made a difference because Mr. Bee's dispute is purportedly only over how the Board weighed the evidence. *See, e.g.*, Def. Mot. at 45 ("As we have explained above, the issue here is not whether a VA exam may be relevant to a disability claim, but whether the weight attached to it by the board was arbitrary and capricious."). That is not Mr. Bee's only dispute, but it is one of them. And liberal consideration's whole purpose is to alter how the Board weighs evidence. This defense of the Board is really no defense at all.²

Finally, the Government incorrectly argues that liberal consideration is about record corrections involving "misconduct" and therefore is inapplicable to Mr. Bee. Def. Mot. at 43. That reasoning defies *Doyon* yet again. Liberal consideration, the Federal Circuit held, is *not* limited to cases involving misconduct or seeking a discharge upgrade. *See Doyon*, 58 F.4th at 1243, 1246 (rejecting that liberal consideration "is limited to characterization upgrades" or "does not include review of an honorable discharge for reasons other than misconduct").

In sum, the Board flouted core principles of liberal consideration in disregarding expert testimony and record evidence that Mr. Bee was unable to perform his duties at the time of his discharge. As a result, the Board "failed to apply the appropriate standard," as interpreted by the Federal Circuit—rendering its decision arbitrary, capricious, and contrary to law. *LaBonte*, 2023 WL 3197825, at *9; *Hassay*, 150 Fed. Cl. at 484 (vacating board decision because it "does not reflect that it took into account the principles outlined in" the Hagel and Kurta Memos). Liberal consideration of that evidence would have resulted in finding Mr. Bee unfit and entitled to medical retirement.

² The Government also invokes an assortment of cases that predate *Doyon* and thus fail to address the proper standard. Def. Mot. at 45–46; *Johnson v. United States*, 123 Fed. Cl. 174, 179 (2015), *aff'd*, 675 F. App'x 1011 (Fed. Cir. 2017).

III. MR. BEE WAS UNFIT AND THE GOVERNMENT’S ARGUMENTS TO THE CONTRARY ARE UNAVAILING

While liberal consideration undoubtedly applies to Mr. Bee’s petition, the Board’s analysis does not withstand scrutiny under any standard. The record demonstrates that Mr. Bee was unfit to perform the duties reasonably required of his office, grade, rank, or rating at the time of his discharge. In its effort to reply, the Government mischaracterizes or ignores Mr. Bee’s arguments as well the controlling regulations.

A. The Board’s Fitness Determination Is Not Supported By Substantial Evidence

The Board’s conclusion of fitness ignored many of the duties reasonably required of an Infantry Unit Leader and substituted the “garrison environment” (i.e., non-deploying) standard in their place. As Mr. Bee has explained, the Board failed to relate the nature and degree of his disabilities to the requirements and duties that Mr. Bee could reasonably be expected to perform in his office, grade, rank, or rating, *i.e.*, expected to perform as a Marine Corps Infantry Unit Leader. The Government’s arguments to the contrary are unsound. For one, the Government fails to respond to Mr. Bee’s explanation that the Board’s novel “garrison environment” standard has no regulatory or precedential support—it has never been accepted by any court that counsel is aware of. Nor has the Government cited any such case.

The Government’s half-hearted defense of the “garrison environment” standard is telling. While purporting to endorse that standard, the Government alludes to the many duties that an Infantry Unit Leader is “reasonably [] expected to perform,” but then considered only activities that Mr. Bee *himself* had performed while assigned to a billet outside of his MOS. For example, the Government cites Mr. Bee’s FITREP accomplishments at FMTB-E in training students, leading them on carefully planned hikes, and “maintain[ing] flawless accountability of personnel,

weapons, and equipment,”³ then contrasts such activities to the primary duties of an Infantry Unit Leader in the MOS Manual. Def. Mot. at 25 (quoting AR 1314, 1316, 1321, and 1326). But the duties cited from the MOS Manual are: “‘assist commanders . . . in . . . training, *deployment and tactical employment*’; ‘supervise and coordinate the preparation of personnel, weapons and equipment *for movement and combat, the establishment and operation of unit command posts, the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort*’; advise[] the platoon commander on all issues of discipline, morale and welfare.” *Id.* at 25 (quoting MCO 1200.7 ¶ 3110.16) (emphasis added). These duties—cited by the Government—revolve around operational employment of infantry Marines in a combat environment, whether training infantry Marines in a garrison environment or commanding infantry Marines deployed in combat. The combat-related duties required of an Infantry Unit Leader bear no resemblance to the duties of training chaplains and medical personnel in controlled classroom and garrison settings that were assigned to Mr. Bee following his catastrophic injuries.

Marine Corps regulations thoroughly explain the duties required of an Infantry Unit Leader. Performing those combat-related duties was Mr. Bee’s experience as an infantry Marine. But at the time of his discharge, Mr. Bee was unable to perform those same duties because of his TBI and PTSD conditions. Both the Board and the Government suggest that Mr. Bee is relying on “speculative” standards of performance, but they substitute their own speculation regarding the nature of his assignment at FMTB-E. *See, e.g.*, AR 528 (“Any comment on other possible assignments and attendant medical risks or requirements would be speculative.”); Def. Mot. at 29 (“Mr. Bee’s opinion to the contrary . . . is itself conjecture.”).

³ Mr. Bee continues to dispute that his FITREPS sufficiently demonstrate adequate performance of duties in the non-operational, low impact billet at FMTB-E.

Mr. Bee has repeatedly explained that he was unfit to perform the duties required by his rating, Infantry Unit Leader. An Infantry Unit Leader must be capable of “control[ing] the fire and maneuver of his assigned section,” “repel[ing] the enemy assault by fire and close combat,” “[e]ngag[ing] targets with an M136 or M72A7 light anti-armor weapon and an M67 hand grenade,” “request[ing] close air support,” and “navigat[ing] to designated points using a topographic map, lensatic compass, protractor, and global positioning equipment while dismounted and mounted.” Marine Corps Infantry Training and Readiness Manual, NAVMC 3500.44C, at 9-3 to 9-17. Indeed, spatial awareness—from navigation to directing the deployment of air and artillery power on the battlefield—is a particularly important capability for both infantry Marines generally, and Infantry Unit Leaders in particular. *See, e.g., id.* at 8-3 to 8-5, 9-11 to 9-21 (emphasizing navigation and directing of close air support). Mr. Bee’s actual experience as an infantry Marine was entirely consistent with these requirements. His Navy and Marine Corps Achievement Medal with Combat Distinguishing Device and Combat V was awarded in part based on Mr. Bee “expos[ing] himself to the enemy’s small arms fire” during an attack in order to “gather[] direction and distance and formulate[] an artillery call for fire mission on the enemy’s position.” AR 49. Mr. Bee’s in-rating FITREPs from his time deployed extol his accomplishments in controlling “air assets on several occasions while conducting aerial reconnaissance of certain areas where future patrols and operations were to occur.” AR 373.

The Government speculates that Mr. Bee might have found a billet limited to a garrison environment in which he would not have to perform duties related to combat, navigation, and directing other military assets. However, the Government need not have speculated—Mr. Bee in fact found his way to such a billet at FMTB-E, which the Government has admitted was not in Mr. Bee’s MOS rating. At the same time, the Government (and the Board) accuse Mr. Bee of

speculating about his duties if he had returned to operational service, as he would have had to do following his shore tour at FMTB-E. Mr. Bee has no need to speculate, nor does the Court need to substitute its own judgment for “the military establishment.”⁴ Def. Mot. at 28. Mr. Bee knows what his duties as an infantry Marine consisted of for over a decade—they matched what Marine Corps regulations unambiguously require of an infantry Marine. By contrast, the Board offered no justification, citation, or evidence to support its fanciful conclusion that infantry Marines need not be capable of duties beyond training Navy medics and chaplains in a garrison environment. Nor, for that matter, does the Board answer the obvious follow-on question: Training medics and chaplains for what? The answer is certainly not “combat,” because medics and chaplains are not trained to serve as “primary scouts, assault troops, and close combat forces,” which are duties required of a Marine Corps Rifleman. Bee Mot. at 7.

The Board expressly limited its consideration to a “garrison environment,” which is a legal error that violates the requirements of SECNAVINST 1850.4E. Deployability is a mandatory consideration for fitness. *See* SECNAVINST 1850.4E encl. 3 § 3304 (“[N]on-deployability *shall* be one of many factors considered by the PEB in determining Fitness for continued naval service.” (emphasis added)). To be sure, the instruction explains that “non-deployability alone will not normally constitute a basis for a finding of Unfit to continue naval service.” *Id.* The key factor for the Board to consider is whether non-deployability “interferes with [a service member’s] ability to perform the duties of office, grade, rank or rating,” and if it does, the service member “should be referred to the PEB for disability evaluation.” *Id.*

⁴ The Government cites the Board’s military expertise, but the Board disavowed any medical or military expertise to render a fitness determination. They are “civilian employees of the Department of the Navy, . . . none of whom have the medical expertise and only some of whom incidentally have experience as a line officer in their past.” AR 472.

Some military roles do not necessarily require deployability. For example, certain noncombatants, like the religious and medical personnel that Mr. Bee trained at FMTB-E, may be able to perform all of their normal duties without leaving the country or a garrison environment. But Marine Corps regulations are unambiguous about the requirements for an Infantry Unit Leader: Such a Marine must be ready and able to perform the combat duties required of him while in a garrison environment and while deployed. This fact is indisputable, given that the Marine Corps manual requires that Infantry Unit Leaders be able to “assist commanders . . . in . . . training, *deployment* and *tactical employment*” of combat assets and “supervise and coordinate . . . the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort.” *See* Def. Mot. at 25 (quoting MOS Manual ¶ 3110.16 (emphasis added)). The Board erred by limiting its analysis to its contrived “garrison environment” standard.

B. The Government’s Counterarguments Are Unavailing

The Government’s response also mischaracterizes Mr. Bee’s central arguments. For example, Mr. Bee does not dispute the propriety of the sea/shore rotation. Nor has Mr. Bee ever suggested that “line Marines who are not serving in combat are unfit.” Def. Mot. at 33. Rather, Mr. Bee has explained that his role at FMTB-E was a low-impact—“take-a-knee”—non-operational shore tour. *See* Bee Mot. at 19. As an Infantry Unit Leader, to be fit to perform the duties of his rate, he needed to be able to return to a high-impact operational tour. Mr. Bee was not fit to return to a deploying role as an infantry Marine—because he could not perform the core duties of his rate as an Infantry Unit Leader.

The Government conflates two of Mr. Bee’s arguments: First, Mr. Bee’s out-of-rate FITREPS at FMTB-E are inadequate to support the Board’s conclusion, and, second, Mr. Bee’s disabilities rendered him unfit to perform the duties of his office, grade, rank, or rating.

Regarding the FITREPS at FMTB-E, Mr. Bee explained that his role at FMTB-E was not as challenging as an operational infantry billet and did not require performance of the duties of an infantry Marine, so the FITREPS Mr. Bee received at FMTB-E are not evidence of fitness to perform the duties of an infantry Marine. The ability to instruct does not imply the ability to perform—or as George Bernard Shaw styled it, “Those who can, do; those who can’t, teach.” George Bernard Shaw, *Man and Superman* (1905). Dan Campbell, for example, recently led the Detroit Lions to, arguably, their best season ever—but that does not imply he could take the field as a tight end. Likewise, Mr. Bee’s apparent success in teaching noncombatants about certain aspects of operational service does not imply that he could have adequately trained Marine Rifleman to perform their combat duties, much less that he could have returned to leading Marine Rifleman in combat.

Indeed, Mr. Bee’s work training noncombatants at FMTB-E does not even suggest that he could have engaged in garrison environment Marine combat training. Mr. Bee’s PTSD and TBI would have precluded him from participating in the tactical combat scenarios used for training infantry Marines. The “revivification or re-experiencing” and “avoidance of possible triggering factors” that Dr. Vogel noted in his evaluation are incompatible with the training necessary for Marine Rifleman to succeed in combat. AR 58. In short, the FMTB-E FITREPS are not evidence that Mr. Bee could return to the combat-related duties required of an Infantry Unit Leader.

Separately, Mr. Bee has demonstrated that his disabilities rendered him unfit to perform the duties of his office, grade, rank, or rating. Mr. Bee compared the limitations caused by his PTSD and TBI disabilities, as detailed in thorough medical evaluations conducted by Drs. Johnson, Vogel, and Blumenfeld, to the duties of an infantry Marine as established by Marine Corps regulations and Mr. Bee’s own experiences. The symptoms of Mr. Bee’s disabilities (difficulty

with spatial orientation, operating outside a controlled environment, effective communication) are incompatible with the duties required of an Infantry Unit Leader (navigating and coordinating military assets, leading Marines in the intense and unpredictable combat environment, and communicating effectively during intense situations).

The Government argues that Mr. Bee was properly assigned to FMTB-E and characterizes his argument as a “quarrel [] with military staffing and assignment decisions.” Def. Mot. at 26. But Mr. Bee has never taken issue with any military staffing or assignment decision. Rather, he has explained that he was assigned to a generally coded billet. *See, e.g.*, Am. Compl. at 34, ECF No. 42. This means he was in an assignment that was broadly available to Marines in different, unrelated ratings, because the assignment does not require the specialized skills of any particular rating. Because the FMTB-E billet did not require specialized skills, it follows that performance of the duties of *that* billet does not reflect the ability to perform the specialized skills of an infantry Marine. That’s common sense. Although a neurosurgeon might be qualified to perform other duties of a physician, like moonlighting at an urgent care center, it does not follow that one should trust the physician at your local urgent care center to perform brain surgery. But that is the syllogism the Board relied on: Mr. Bee’s debatably adequate performance⁵ in a low-impact, generally coded billet, according to the Board, indicates that he would have been able to perform the duties of a far more intense infantry billet if he returned to his rating.

The Government repeatedly stresses the Board’s expertise in military assignment, but the Board ignored the details of Mr. Bee’s billet at FMTB-E. Much as he had to earn a BMOS of 8411

⁵ Mr. Bee does not concede that his FITREPS accurately reflect adequate performance even if the low-impact duties of his FMTB-E billet. To the contrary, the record shows that he routinely needed to be relieved by fellow instructors when symptoms of his disabilities (like nausea) interfered with teaching. His superiors at FMTB-E, presumably cognizant of his difficulties, made the appropriate decision not to penalize Mr. Bee in his FITREPS for suffering the symptoms of PTSD and TBI.

(Recruiter) to serve at the recruiting station earlier in his career, Mr. Bee had to undergo training as a “Formal School Instructor” to become qualified for his role at FMTB-E. *See, e.g.*, AR 94, 213, 302, 1225. At the time, “Formal School Instructor” was a qualification that, unlike Recruiter, did not yet merit an “Additional MOS” designation.⁶ However, more recent developments shed substantial light on the nature of that qualification and billets assigned that qualification. The updated MOS Manual, NAVMC 1200.1H, explains that “Formal School Instructor,” MOS 0951, is an “Exception MOS” (“EMOS”) open to at least 154 different ratings, including 3529 and 0369. NAVMC1200.1H, Military Occupational Specialties Manual, encl. 1 at 3-102 (Sept. 7, 2022). The same document explains that an “EMOS” is a “Non-PMOS that is generally FMOS,⁷ but include exceptions that require a PMOS.” *Id.*, encl. 1 at xi. In other words, Mr. Bee’s billet was expressly associated with a “Non-PMOS”—that is, non-rating—qualification open to at least 154 diverse Marine ratings. Contrary to the Board, it was not an in-rate Infantry Unit Leader billet, or even an infantry billet, but one open to virtually any Marine, because it did not require the specialized skills of an Infantry Unit Leader or infantry Marine.

The Government concedes that “as in *Nyan* and *Kelly*, if it were true that these duties were those of a make-work job or some other to which we was consigned in recognition of the fact that he could not cut it in his PMOS, he would have an argument.” Def. Mot. at 32. That is precisely what the evidence shows and what the Board acknowledged. Mr. Bee explained that his supervisors characterized the assignment at FMTB-E as a “‘break’ in lieu of a fifth active duty deployment.” AR 26. The Board itself acknowledged the billet was likely a “well-deserved

⁶ *See* Am. Compl. at 9 n.4, ECF No. 42 for a thorough explanation of the different types of MOS. Here, the salient point is that a Marine’s rating is only the primary MOS (“PMOS”).

⁷ An FMOS (or “Free MOS”) is a “Non-PMOS that can be filled by any Marine regardless of primary MOS. A free MOS requires skill sets unrelated to primary skills.” *Id.*

opportunity to ‘take a knee’ after [Mr. Bee’s] multiple combat deployments.” AR 481. There may be plenty of “fit for duty” Marines appropriately assigned to low-impact positions like Mr. Bee’s billet at FMTB-E, but in Mr. Bee’s case, the generally coded billet at FMTB-E was *explicitly* intended to be a low-impact job assigned “in recognition of the fact that he could not cut it in his PMOS.” Def. Mot. at 32. And that is because Mr. Bee was unfit.

C. The Board Improperly Relied On The Lack Of An MEB Referral

The Board also erred by relying on the lack of an MEB referral as evidence that Mr. Bee was fit to perform his duties. The Government’s defense before this Court, again, cannot rescue the Board’s fundamentally flawed reasoning.

Despite the Government’s insistence that the Board did not rely on the *absence* of evidence as though it were affirmative evidence, the Board’s decision on its face shows the opposite. The Board repeatedly made conclusory statements emphasizing that the lack of an MEB referral was key to its findings. *See, e.g.*, AR 473 (“The burden was on you to prove that you were reasonably unable to perform the duties of your office, grade, rank, or rating due to you medical conditions at the time of your discharge *despite the fact that none of the numerous medical providers who treated or evaluated you over the final three years of your enlistment ever believed that they warranted referral to the MEB . . .*” (emphasis added)); AR 478 (“It is unlikely that any physician would, *and apparently none among the numerous different specialty clinics and primary care providers that you visited at different locations after incurring your final TBI in June 2010 did, believe that your medical conditions significantly interfered with the performance of duties appropriate to your office, grade, rank or rating.*” (emphasis added)).

Indeed, contrary to the Government’s argument, the Board at times *explicitly* used the combination of presumption of regularity and lack of an MEB referral to overcome actual record evidence contrary to its decision. The Board dismissed actual evidence, such as the comprehensive

neuropsychological examination conducted by Dr. Johnson, based, at least in part, on absence of other evidence.⁸ It also used the absence of evidence to rebut Dr. Blumenfeld's report.⁹ The Board did the same to rebut Dr. Vogel's in-depth, multi-day examination.¹⁰

Simply put, the Board relied extensively on the absence of an MEB referral in its decision to override affirmative record evidence showing that Mr. Bee was unfit. Such reliance is inappropriate. See Bee Mot. at 32–33. The Board's reliance is also wrong because it misunderstands the medical record. As explained in Mr. Bee's Amended Complaint, Mr. Bee

⁸ See, e.g., AR 478–79 & n.22 (“[T]he Board applied the presumption of regularity to the assessments made by your numerous medical providers between your TBI in June 2010 and your discharge in April 2013. . . . You were seen by multiple professional military medical providers across a variety of medical specialties at three different medical centers or clinics during the relevant time period. All of these providers had an ethical, professional, and regulatory obligation to refer you to a MEB if they believed that your conditions appeared to significantly interfere with your performance of duties appropriate to your office, grade, rank, or rating; that your conditions would prohibit returning you to your parent command in a medically unrestricted duty status following appropriate light duty; or that your conditions may seriously compromise your health or well-being if you were to remain in the Marine Corps. Their professional reputations and credentials could be jeopardized if they failed to fulfill this obligation, yet none of them ever did. Only the Neurology professionals ever even assigned you any significant duty limitations, and those were fully lifted just four months after the June 2010 TBI incident when you were restored to full duty status. *This provided compelling evidence that your conditions never warranted referral to a MEB at any time prior to your discharge from the Marine Corps. Unfortunately, you did not provide sufficient evidence to overcome this presumption.*” (emphasis added)).

⁹ AR 479 (“As such, the Board found the fact that these multiple military medical providers never referred to you a MEB, or even imposed significant duty limitations, *to be significantly more probative of the effects of your medical condition upon your ability to perform your duties during the period in question* than the opinion offered by Dr. Blumenfeld almost five years after your discharge without the benefit of any direct observation of you during the relevant time frame.” (emphasis added)).

¹⁰ AR 480 (“[T]he Board did not doubt Dr. Vogel's credentials Rather, it simply did not assign significant weight to his conclusions regarding your functional impairments at the time, as they were not based upon any direct observation of your performance or supported by the objective evidence detailing your performance and capabilities during the relevant period in question. As such, the Board found that the evidence you provided *did not overcome the presumption of regularity assigned to the judgment of the numerous military medical providers who treated and assessed your medical conditions during the period in question, none of whom believed that they warranted referral to a MEB.*” (emphasis added)).

intentionally sought *symptomatic* treatment, meaning most of his providers were not in a position to conduct a robust evaluation; those that did conduct robust evaluations, such as Drs. Johnson, Vogel, and Blumenfeld, found him to be significantly impaired in ways inconsistent with the duties of his rating. *See* Am. Compl. at 21–22, ECF No. 42.

D. The Board Improperly Disregarded Mr. Bee’s VA Rating

The Government also argues that the Board adequately considered Mr. Bee’s VA rating and was merely unpersuaded by it. That is wrong in several respects. First, the Board addressed the service-connection aspect of a VA rating without addressing the fact that VA ratings are manifestation based (i.e., based on *symptoms*). *See* AR 471 (“[T]he Board did not find the disability ratings assigned by the Department of Veterans Affairs (VA) to be persuasive since VA service-connection determinations are unrelated to fitness determinations.”). In the rating decision, the VA noted some of the manifestations upon which it based the 70% evaluation for PTSD, including: “[n]ear-continuous panic affecting the ability to function independently, appropriately, and effectively,” “[o]ccupational and social impairment, with deficiencies in most areas,” and “[c]hronic sleep impairment.” AR 105. The VA also noted manifestations supporting the 70% evaluation for TBI, including: “moderate impairment of memory, attention, concentration, or executive functions,” “[m]oderately impaired judgment,” “[s]ocial interaction is frequently inappropriate,” and “[o]ccasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation.” AR 107.

The Government acknowledges that it is legal error to ignore VA medical evidence, but claims “the [B]oard did consider the VA’s determination[,] dissected it fully and, upon an extensive analysis, simply found it less probative than contrary evidence—all the while fully accepting Mr. Bee’s in-service and post service PTSD diagnoses.” Def. Mot. at 45. The Board’s “dissection” and “extensive analysis,” in its entirety, was the above comment about service

connection, a disparaging comment about Dr. Vogel,¹¹ and a passing comment about “inherent unreliability.”¹² That was the Board’s “extensive analysis.” Despite repeated assurances that it fully credits the VA’s rating decision, the Board plainly did not.

The Board readily concedes the accuracy of Mr. Bee’s VA rating and makes no effort at any point to demonstrate that Dr. Vogel’s analysis was incorrect or that he found symptoms that were not present. Yet the Board never addresses the implication of the rating: The VA considers Mr. Bee 70% disabled from performance in the *civilian* workplace for each of PTSD and TBI (combined, that’s 90% disabled from *civilian* work). It defies credulity to think that TBI and PTSD render Mr. Bee almost entirely incapable of civilian employment, yet returning to the far-more-demanding world of the Marine Corps infantry—with its constant triggers for Mr. Bee’s PTSD and requirements of combat service—would have been no problem for him. *See Valles-Prieto*, 159 Fed. Cl. at 618.

IV. THE COURT SHOULD ENSURE THAT MR. BEE RECEIVES TIMELY RELIEF

In these circumstances, the Court should not remand to the Board for a third bite at the apple. Instead, it should hold that Mr. Bee is entitled to the relief he seeks and direct the Board to grant it—as in the recent decision in *Keltner v. United States*, 165 Fed. Cl. 484, 517–18 (2023).

¹¹ AR 479–80 (“Again, the Board did not doubt or question Dr. Vogel’s competency and credentials. Rather, it simply recognized a VA Compensation and Pension (C&P) examination for what it actually is. The C&P examination, from which Dr. Vogel’s report arose, is intended assess the validity of the conditions for which you claimed service-connected disability benefits, and to document the effect of those conditions for the purpose of assigning disability ratings to those service-connected conditions upon which disability compensation is based. . . . Further, contrary to your contention, C&P examinations are not thorough.”).

¹² AR 485–86 (“Setting aside the fact that your successful performance of duties as an instructor at FMTB-E over a significant period of time severely undermined Dr. Vogel’s conclusions in this regard and the inherent unreliability and irrelevance of a VA C&P examination towards fitness determinations in general, an inability to perform these functions in combat could not serve as the PEB’s sole basis for a finding of unfitness.”).

In *Keltner*, an Air Force veteran sought “disability retirement pay and benefits resulting from [PTSD] incurred in the line of duty,” rather than the administrative discharge he had received. *Id.* at 487. The corrections board rejected that claim, finding that the veteran’s PTSD was not “a result of military stressors.” *Id.* at 497. After the veteran challenged that decision, the court remanded to the board and, on remand, the board granted relief in part—but assigned the veteran a disability rating of only 10%, not the 50% the veteran had requested. *Id.* at 497–98. The court overturned that decision for several reasons—including that the board failed to apply liberal consideration to the veteran’s petition by failing to give the veteran “any benefit of the doubt.” *Id.* at 506–17.

And contrary to the government’s argument that the only available relief was a remand, the court held that “there is no reason, let alone any requirement, that this Court must remand [this] case to the Air Force for yet a third bite at the apple.” *Id.* at 517. Because “[t]he record is fully developed and supports [the veteran’s] claim for a disability retirement at a fifty percent rating,” the Court could direct the appropriate relief for the veteran. *Id.* at 517–18 (collecting cases); *see also* Order at 1, *Keltner v. United States*, 165 Fed. Cl. 484 (2023) (No. 19-663C) (2023), ECF No. 80 (instructing that “[t]he AFBCMR shall correct Mr. Keltner’s records to reflect that: Mr. Keltner is entitled to a fifty percent disability rating for [PTSD]”).

Here, too, “[t]he record is fully developed and supports [Mr. Bee’s] claim for disability retirement.” 165 Fed. Cl. at 517. There is no need for the Board to assign a rating for Mr. Bee’s unfitting PTSD and TBI, because that question was answered by the VA at the time of his discharge. Had Mr. Bee been provided the disability processing to which he was entitled, the Navy would have had to adopt the ratings provided by the VA upon determining that his conditions were unfitting. Moreover, at a minimum, Mr. Bee’s PTSD and TBI, each rated at 70% independently at discharge, would have merited at least a 30% combined rating, thus entitling him to a retirement.

As the court explained in *Keltner*, “an unexplained and irrational gulf between the Board’s . . . disability rating and the VA’s . . . disability rating . . . renders the Board’s decision arbitrary and capricious.” *Id.* at 484, 506. After nearly six years of intransigence by the Board (and years more of struggles with PTSD resulting from his service), Mr. Bee deserves prompt, effective relief—not yet *another* round of argumentation before the recalcitrant Board.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Bee’s motion, deny the Government’s cross-motion, and direct the Board to correct Mr. Bee’s record to reflect medical retirement.

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Respectfully submitted,

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Case 1:21-cv-01970-PSH Document 64 Filed 04/19/24 Page 1 of 27

No. 21-1970C
(Judge Philip J. Hadji)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,
Plaintiff,

v.

THE UNITED STATES,
Defendant.

DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND
CROSS-MOTION FOR JUDGMENTS ON THE ADMINISTRATIVE RECORD

OF COUNSEL:

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Lieutenant Colonel, U.S. Marine Corps
Office of the Judge Advocate General
General Litigation Division (Code 14)

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
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Washington, D.C. 20044
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April 19, 2024

Attorneys for Defendant

As we have explained, liberal consideration is due in assessing the circumstances that resulted in his discharge. Nonetheless, *Doyon* does not reach as far as Mr. Bee imagines. In fact, the Federal Circuit held that “unfitness” was “not properly before us at this stage,” *Doyon*, 58 F.4th at 1248, and remanded the case to this Court to “instruct the BCNR” to consider whether the evidence indicates, under the liberal consideration standard, that PTSD contributed to the circumstances resulting in Mr. Doyon’s discharge and warrants a change in the narrative reason for that discharge. *Id.* The Federal Circuit did not, as Mr. Bee urges, require the board to apply liberal consideration to a determination of his fitness.

Here, while the board did not explicitly use the phrase “liberal consideration,” the board applied liberal consideration as far as it was reasonably able. *See Melendez Camilo v. United States*, 642 F.3d 1040, 1045 (Fed. Cir. 2011) (citing *Armstrong v. United States*, 205 Ct. Cl. 754, 756 (1974)) (“In other words, an administrative board’s or trial court’s failure to mention specific evidence does not mean . . . that it failed to consider that evidence.”). Thus, as we noted in our opening brief, the board “accepted [Mr. Bee’s] TBI and PTSD diagnoses.” ECF 54 at 42. But its “sole focus was determining whether these conditions rendered Mr. Bee unfit, the sole basis for the disability discharge he sought.” *Id.* Mr. Bee complains that “the Government incorrectly argues that liberal consideration is about record corrections involving ‘misconduct’ and therefore is inapplicable to Mr. Bee.” ECF 57 at 15 (quoting ECF 54 at 43). In fact, however, in that part of our brief, we were simply explaining the obvious inapplicability of the liberal consideration guidance to determinations of unfitness, by demonstrating, through examples, the starkly ill fit of that guidance to such determinations. *See* ECF 54 at 42–44.

In any event, Mr. Bee’s chief complaint on this point appears to be, in essence, that the board did not wholly disregard substantial evidence of his fitness in favor of evidence he views as supporting his claim, asserting (incorrectly) that “[l]iberal consideration requires the Board to

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

)	
WILLIAM OLAS BEE,)	
)	
Plaintiff,)	
)	No. 21-1970
v.)	Judge Philip S. Hadji
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

DEFENDANT’S MOTION FOR LEAVE

Defendant, the United States, respectfully requests leave to file: (1) a brief response to the May 7, 2024 Notice of Supplemental Authority (ECF No. 68) filed by plaintiff, William Olas Bee, informing the Court of the March 25, 2024, decision in *Ford v. United States*, 170 Fed. Cl. 458 (2024); and (2) the April 4, 2024, *Clarifying Guidance to Boards for Correction of Military/ Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations*, issued by the Acting Undersecretary for the Department of Defense (DoD), Personnel and Readiness, Ashish S. Vazirani, which clarified the DoD policy on the application of “liberal consideration” by Military Boards for the Correction of Military (or Naval) Records. We conferred on May 24, 2024, via email with plaintiff’s counsel regarding our motion for leave. Plaintiff’s counsel advised that plaintiff consents to the filing of (1) our response to Mr. Bee’s filing but will oppose the filing of (2) our notice of DoD guidance.

We seek leave to file the attached response and notice for the limited purposes of: (1) responding to the allegations made regarding the *Ford* matter in Mr. Bee’s May 7, 2024 filing; and (2) providing the Court, for completeness’ sake, relevant and directly on-point, albeit post-

consideration” by Military Boards for the Correction of Military (or Naval) Records, issuing *Clarifying Guidance to Boards for Correction of Military/ Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations*. See Exhibit B (Vazirani Memorandum). Although the Vazirani Memorandum’s clarifying guidance was issued after the BCNR’s decision in this case, we felt obliged to bring it to the Court’s attention and to note only that it is consistent with (not the basis for) our position that liberal consideration is limited to “discharge” relief provided by correction boards as described in the Kurta Memorandum and as required by 10 U.S.C. § 1552(h)—and not applicable to underlying determinations of fitness and medical disability, which are conducted under a different statutory and regulatory regimen. Vazirani Mem., at 1; *see also id.* (“[A]ny request for a medical retirement or separation necessarily asserts the existence of an error or injustice in the previous *failure* of the Service to discharge the individual for unfitness, rather than in the circumstances of the individual’s actual discharge or dismissal. As such, 10 U.S.C. § 1552(h) cannot be read to require the application of liberal consideration to assess whether a qualifying PTSD or TBI condition potentially contributed to the circumstances resulting in a medical discharge which never occurred.”) (emphasis in original).

Case 1:21-cv-01970-PSH Document 70-1 Filed 05/28/24 Page 30 of 32

Exhibit B



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

APR - 4 2024

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Clarifying Guidance to Boards for Correction of Military/Naval Records
Considering Cases Involving Both Liberal Consideration Discharge Relief Requests
and Fitness Determinations

This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. § 1552 by the Military Department Boards for Correction of Military/Naval Records (BCM/NRs). This guidance is being promulgated in light of *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023), and is consistent with that decision.

It is DoD policy that the application of liberal consideration does not apply to fitness determinations, an entirely separate Military Department determination regarding whether, prior to “severance from military service,” the Applicant was medically fit for military service (i.e., fitness determination). While the BCM/NRs are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge in accord with *Doyon*, they should not apply liberal consideration to retroactively assess the Applicant’s medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Consistent with the *Doyon* court’s interpretation of 10 U.S.C. § 1552(h), BCM/NRs will apply liberal consideration to all applications where the Applicant alleges that combat- or military sexual trauma (MST)-related post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) “potentially contributed to the circumstances resulting in [severance from military service].” However, any request for a medical retirement or separation necessarily asserts the existence of an error or injustice in the previous *failure* of the Service to discharge the individual for unfitness, rather than in the circumstances of individual’s actual discharge or dismissal. As such, 10 U.S.C. § 1552(h) cannot be read to require the application of liberal consideration to assess whether a qualifying PTSD or TBI condition potentially contributed to the circumstances resulting in a medical discharge which never occurred.

Accordingly, in the case of an Applicant described in 10 U.S.C. § 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the BCM/NR will bifurcate its review. First, the BCM/NR will apply liberal consideration to the eligible Applicant’s assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate. After making that determination, the BCM/NR will then separately assess the individual’s claim of medical unfitness for continued service due to that PTSD or TBI 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.

This guidance is not intended to interfere with or impede the BCM/NRs' statutory independence. Through this guidance, however, there should be greater uniformity among the BCM/NRs, ensuring fundamental fairness to our Service members and veterans.



Ashish S. Vazirani
Acting



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

RJO
Docket No. 3901-18
Ref: Signature Date

MR WILLIAM O BEE
204 SPINNAKER PLACE
JACKSONVILLE NC 28546

Dear Mr. Bee,

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 for Correction of Naval Records, sitting in executive session, considered your application on 25 July 2019. The names and votes of the members of the panel 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. In addition, the Board considered the advisory opinion contained in Senior Medical Advisor CORB letter 1910 CORB: 002 of 4 April 2019 and Director CORB letter 1910 CORB: 001 of 11 April 2019 and your response to the opinions.

A review of your record shows that you entered active duty with the Marine Corps in June 2000. You were deployed to Afghanistan on multiple occasions and suffered a concussion in June 2010 while in Afghanistan that resulted in your evacuation to Germany for treatment. You were diagnosed a Traumatic Brain Injury (TBI) and transferred back the United States with eventual placement on limited duty effective 21 June 2010. You were removed from limited duty on 20 December 2010. On 3 October 2012, you requested to participate in the Voluntary Separation Pay Program (VSP) for which you were later approved. You were seen by mental health providers in January 2013 and February 2013 and diagnosed with TBI, post-concussion syndrome with cognitive impairment, and Post-Traumatic Stress Disorder (PTSD) before being medically cleared to separate from active duty on 13 February 2013. On 1 April 2013, you were discharged from the Marine Corps pursuant to your request to participate in the VSP program. Post-discharge, you were rated by the Department of Veterans Affairs (VA) for a number of disability conditions, including TBI, Post-Concussive Syndrome, Cognitive Impairment, and

PTSD, with a combined 100% disability rating. As of 2018, you continue to suffer from PTSD and TBI symptoms according to your medical provider.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You assert that you were unfit for continued naval service at the time of your discharge from the Marine Corps due to symptoms related to your TBI, PTSD, cognitive disorder, and post-concussive syndrome. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions contained in Senior Medical Advisor CORB letter 1910 CORB: 002 of 4 April 2019 and Director CORB letter 1910 CORB: 001 of 11 April 2019. First, the Board found compelling evidence that your claimed disability conditions did not create a sufficient occupational impairment to support a finding that you were unable to perform the duties of your office, grade, rank or rating at the time of your discharge. The Board relied primarily on your fitness reports ending Dec 2011 through 1 April 2013. These reports show that you consistently outperformed at least 10 of your peers in performance rankings during the years when you claim to be unfit for continued naval service while earning positive performance comments as a “highly qualified” Marine and promotion recommendations. Despite your arguments that you were not working in your primary MOS, the Board felt this high level of performance was not indicative of a servicemember who is unable to perform the duties of their office, grade, rank or rating since your performance, in addition to being above at least 10 of your peers, was at or above fleet levels for your paygrade. The Board also noted that you earned a Navy-Marine Corps Achievement Medal during the period when you assert you were unfit for continued naval service. Second, the Board determined that you voluntarily requested to be discharged from active duty pursuant to the VSP program. In their opinion, this voluntary request contradicts your claim that you were erroneously discharged from the Marine Corps despite the existence of disability conditions. In the Board’s opinion, you were responsible for your release from active duty based on your request to participate in the VSP program. The Board found no evidence you were denied reenlistment and noted you were issued an unrestricted reenlistment code upon your discharge. Third, the Board found your medical clearance to separate on 13 February 2013 compelling evidence that your disability symptoms were not sufficiently impairing to warrant a referral to the Disability Evaluation System. That medical report noted your conditions but released you without limitations and stated you suffered not decreased functioning ability due to psychological reasons. The Manual of the Medical Department Chapter 15-20 requires separation examinations and evaluations for active duty members and states “comprehensive evaluations are conducted for the purposes of ensuring that Service members have not developed any medical conditions while in receipt of base pay that might constitute a disability that should be processed by the Physical Evaluation Board (PEB) and to ensure Servicemembers are physically qualified for recall to additional periods of active duty. Thus, the standards for being physically qualified to separate are the same as those being qualified to continue active duty Service” Since you were found to be physically qualified to separate by your medical providers and noted not to be suffering from decreased functioning, the Board felt this was additional evidence that you were not unfit for continued naval service at the time of your discharge. Fourth, the Board was not persuaded by your VA assigned disability ratings since 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. As pointed out earlier, the Board found strong evidence that you were fit

for continued active duty based on your performance and medical records. Further, the Board pointed out that you were able to complete first class physical and combat fitness tests from 2010 through 2012 despite earning a 100% disability rating by the VA. In their opinion, this further supported their theory that the VA ratings in your case were not probative on the issue of fitness for continued naval service. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

8/5/2019

X 

ELIZABETH A. HILL
Executive Director





DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE STE 309
WASHINGTON NAVY YARD, DC 20374-5023

IN REPLY REFER TO:
1910
CORB: 002
4 Apr 19

From: Senior Medical Advisor, Secretary of the Navy, Council of Review Boards
To: Executive Director, Board for Correction of Naval Records
Via: Director, Secretary of the Navy, Council of Review Boards

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO FORMER STAFF
SERGEANT WILLIAM O. BEE, USMC

Ref: (a) Your ltr RJO Docket No. 3901-18 dtd 17 Oct 18
(b) SECNAVINST 1850.4E
(c) 38 CFR PART 4 (Veterans Administration Schedule for Rating Disabilities (VASRD))

1. Reference (a) requests comments and a recommendation to former Staff Sergeant Bee's petition to the Board for Correction of Naval Records (BCNR) requesting the Narrative Reason for Separation on his 1 April 2013 DD Form 214 be changed from Force Shaping-VSP to placement on the Disability Retirement List. The application contends referral to the Department of the Navy (DON) Physical Evaluation Board (PEB) ought to have occurred for POST TRAUMATIC STRESS DISORDER (PTSD) and TRAUMATIC BRAIN INJURY (TBI). In response, documents contained in reference (a) were reviewed in accordance with references (b-c). Any additional documents used in this review have been placed on a computer drive accessible to the BCNR.

2. After review, it is my opinion the available evidence provides insufficient support for the petition.

3. The above determination was due to a preponderance of evidence, to include the following:

a. The applicant entered service June 2000, served for nearly 13 years which included 4 combat deployments. As a result of his combat deployments he earned a Navy Achievement Medal with a Combat "V" in 2008 and a Combat Action Ribbon. His petition states he was awarded a Purple Heart which is not documented on his DD214. However, a poorly legible copy of the award certificate is submitted as part of his petition. The applicant is noted to have suffered a concussion with loss of consciousness (Grade 3, although specified as Grade 2 on his DD214) on 8 June 2010, for which he was evacuated to Landstuhl Regional Medical Center in Germany where he was treated for approximately 2 weeks prior to being returned to Camp Lejeune, NC. Service records do not document further deployments or concussive events prior to discharge.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO FORMER STAFF
SERGEANT WILLIAM O. BEE, USMC

b. PTSD:

(1) The diagnosis is not in dispute and is compatible with his active duty assignment record. The applicant was first evaluated by Mental Health on 22 January 2013. He reported having seen an outside provider resulting in no improvement; however, no documentation is available.

(2) He had three more visits to Mental Health (04, 10, and 20 February 2013) prior to discharge. All three visits diagnosed the applicant with anxiety and on the 20 February 2013 note Dr. Kenneth Reeder stated, "He has been experiencing anxiety, potentially in response to leaving the military, for roughly six months." On 12 April 2013, Dr. Victor Barnes diagnosed the applicant with PTSD. None of the mental health notes prior to discharge discuss any restrictions placed on the applicant as a result of mental health issues. Review of psychotropic medication use during the 2-year period prior to separation indicates he filled 4 prescriptions for Effexor: 14 pills on 14 September 2012; 30 pills on 4 January 2013); 30 pills on 18 January 2013); and 15 pills on 19 February 2013, all of varying dosage. This pattern of treatment does not suggest a significant level of duty performance impairment during that period.

c. TBI: The applicant suffered a TBI on 08 June 2010, which was diagnosed as "Mild TBI Symptomatic" at Landstuhl Regional Medical Center 14 June 2010. The health record demonstrates he was treated for this condition and placed on limited duty with his condition described as "good getting better" from 21 June through 20 December 2010. The record does indicate sporadic complaints of mild headaches and intermittent dizziness and nausea. His last recorded prescription for nausea medications was 07 June 2012, about 10 months prior to separation.

d. Review of the applicant's duty performance record over the 2-year period prior to separation (including final Fitness Report covering the period from 1 January to 1 April 2013) reflect an above average level of functioning as a Staff Non-Commissioned Officer. Comments note he was considered to have been dedicated, exceeding requirements, and highly recommended for promotion. He completed all required training and performed a Class A PFT and CFT in the year prior to discharge. Medical notes do not reflect duty restrictions having been placed on the applicant.

4. It is noted by regulation the mere presence of a medical condition corresponding to a disability entry in the VASRD is insufficient to warrant either a finding of unfitness for continued Naval service or a specific disability rating by the Department of the Navy PEB in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a service applicant Unfit for Continued Naval Service. By contrast, eligibility for Compensation & 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.

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July 23, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Robert J. O'Neill
Department of the Navy
Board for Correction of Naval Records
701 S. Courthouse Road, Suite 1001
Arlington, VA 22204-2490

Re: Docket No. 3901-18

Dear Mr. O'Neill:

We write in response to your letter dated April 24, 2019, and the enclosed April 4, 2019 Advisory Opinion by N.S. Howard, MD, DLFAPA (the "Opinion").

We dispute the Opinion's conclusion that the available evidence is insufficient to support the petition of former Staff Sergeant William Bee ("SSgt. Bee") to change the Narrative Reason for Separation on his 1 April 2013 DD Form 214 from Force Shaping-VSP to placement on the Permanent Disability Retirement List (the "PDRL") for Post-Traumatic Stress Disorder ("PTSD") and Traumatic Brain Injury ("TBI") and respectfully request that the Board for Correction of Naval Records ("BCNR") place SSgt. Bee on the PDRL in accordance with his prior petition to the BCNR dated April 25, 2018 (the "Petition") in regard to this matter.

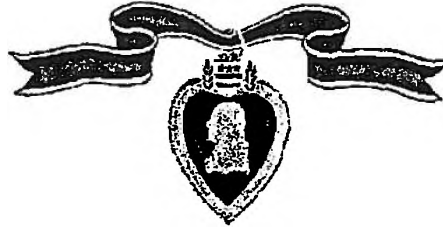
I. THE OPINION IS ARBITRARY AND CAPRICIOUS; IT BLATANTLY IGNORES OBJECTIVE EVIDENCE IN THE RECORD, FAILS TO MEANINGFULLY RESPOND TO SSGT. BEE'S ARGUMENTS, AND PROVIDES NO SUFFICIENT OR REASONABLE BASIS FOR ITS CONCLUSIONS. SSGT. BEE'S SERVICE RECORD

Rather than address the noted performance deficiencies and risks caused by SSgt. Bee's PTSD and TBI, as is required when determining whether a service member is unfit for duty, the Opinion inexplicably spends significant time addressing whether or not SSgt. Bee was actually awarded a Purple Heart. SSgt. Bee's receipt of a Purple Heart, demonstrates the quality of service and his sacrifices for this nation, but it is irrelevant to whether his PTSD and TBI warranted a medical retirement. The only questions at issue in making a fitness determination is whether the evidence presented demonstrates that SSgt. Bee's PTSD and TBI: 1. left him unable to reasonably perform the duties of his office, grade, rank, or rating; 2. Represented an obvious medical risk to the health of the member or to the health or safety of other members; or 3.

LATHAM & WATKINS^{LLP}

EXHIBIT A

Certificate of Purple Heart Award, given July 19, 2016



THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:
THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
HAS AWARDED THE

PURPLE HEART

ESTABLISHED BY GENERAL GEORGE WASHINGTON
AT NEWBURGH, NEW YORK, AUGUST 7, 1782
TO

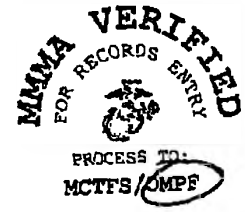
SERGEANT WILLIAM O. BEE, UNITED STATES MARINE CORPS

FOR WOUNDS RECEIVED
IN ACTION

ON 8 JUNE 2010 IN AFGHANISTAN

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS 19TH DAY OF JULY 2016

W. D. Snyder
W. D. Snyder
Lieutenant Colonel, U.S. Marine Corps
Commander, U.S. Marine Corps Forces, Central Command



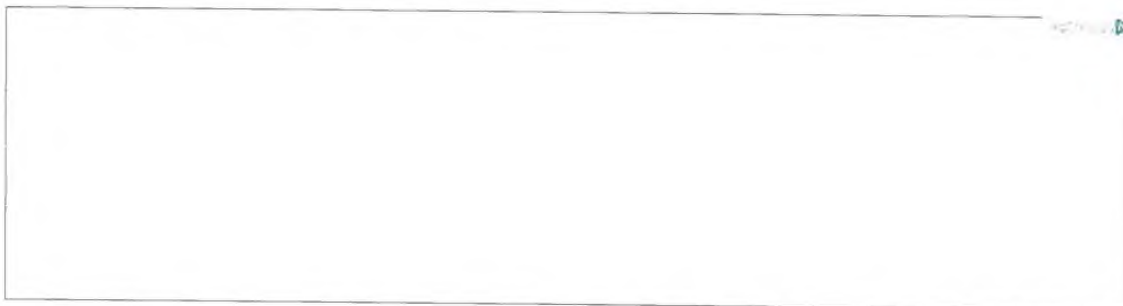
LATHAM & WATKINS^{LLP}

EXHIBIT B

Marine Pictured in Iconic Photos of Taliban Firefight Finally Gets Purple Heart

5/23/2019

Marine pictured in iconic photos of Taliban firefight finally gets Purple Heart

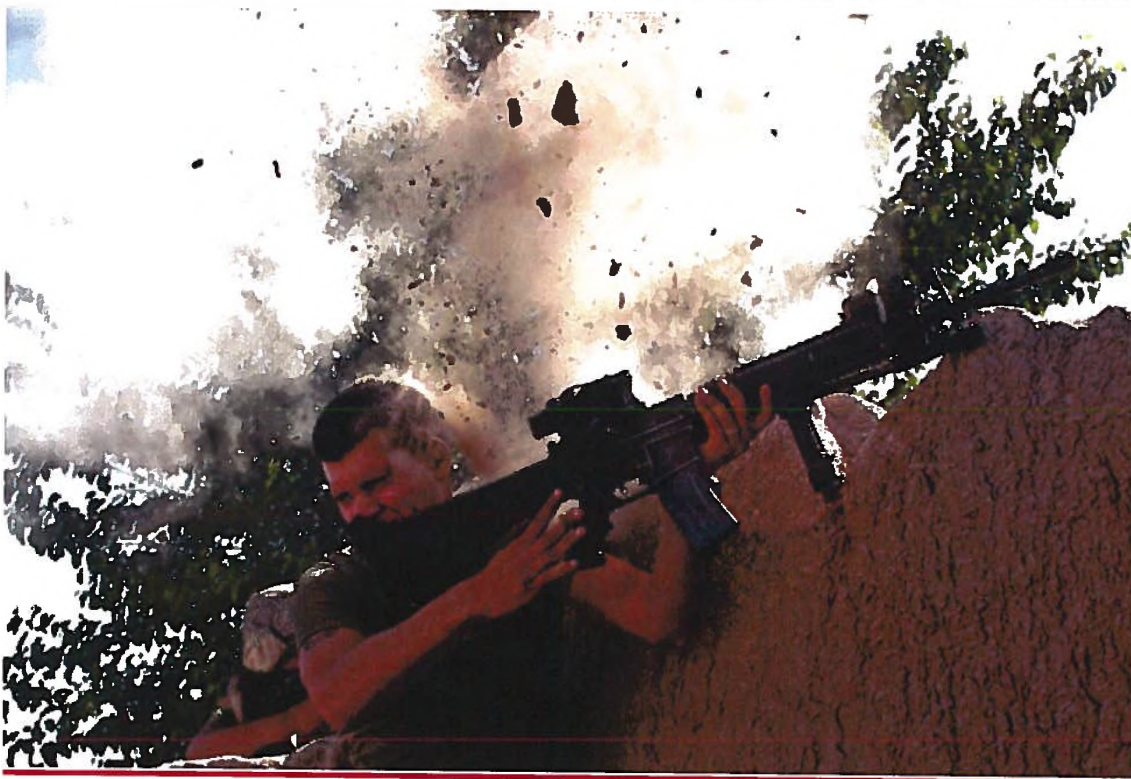


NEWS

Marine pictured in iconic photos of Taliban firefight finally gets Purple Heart

By David K. LI

June 8, 2017 | 2:40pm | Updated



Marine Sgt. William Olas Bee has a close call in 2008 after Taliban fighters opened fire near Garmsir in Afghanistan's Helmand province. Reuters

A Marine photographed in some of the war on terror's most iconic snaps finally received a Purple Heart, six years after he was nearly killed by an IED in Afghanistan.

Sgt. William Bee received the award in August 2016, in connection to an improvised explosive device that went off four feet from him and killed two of his comrades in 2010, [the Daily Mail reported Thursday](#).

"I can say that I've been wounded in the service of our amazing country but that's not the reason my wife pushed for so long to finally get it approved," Bee told the British newspaper.

<https://nypost.com/2017/06/08/marine-pictured-in-iconic-photos-of-taliban-firefight-finally-gets-purple-heart/>

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5/23/2019

Marine pictured in iconic photos of Taliban firefight finally gets Purple Heart

"I look at it as more of a legacy to pass to my son."

Bee, who now lives in Jacksonville, NC, said if his young son, Ethan, ever considered serving, he'd make all the risks 100 percent clear to him.

"I want him to understand down the road how important our service is to our country, and the sacrifices that may entail," Bee said.

"And if, once my son turns 18, he decides to serve, he needs to understand that there is a certain degree of risk involved."

Bee, 35, is best known for a series of incredible 2008 images showing him — without a helmet or Kevlar vest — bravely exchanging gunfire with Taliban fighters.

Two years later, Bee had "both of my eardrums blown (out) simultaneously" and suffered brain injuries in a 2010 IED blast.

The vet admitted he still struggles with booze and occasional fits of rage.

"While some of my brain issues are getting worse, the ability of my wife to adapt and overcome all of them inspires me every single day," Bee said.

"To be brutally honest, I am by no means a good person. I am angry, violent, and have little to no patience. I swear too much, drink too much, and sometimes go internal for months at a time, not talking to any friends or family."

The Marine credits his wife for keeping him in check.

"But Bobbie is always there for me. She will take me by the hand, look me in the eye, and calm me down," he said. "This 4-foot-11 angel can talk me down from anything, and is literally the only reason I am still alive."

Bee now works at the VA, teaching servicemen and -women how to use their military training to land civilian jobs.

The hero said he struggles to talk up VA services because he's previously been openly critical of the agency for inefficiency that's left thousands of needy vets waiting months or years for medical help.

— ADVERTISEMENT —



AdChoices

"While my experience with the VA was not exactly the best, I am able to use those experiences to illustrate to the transitioning service members how to avoid my mistakes and use the VA how it is designed to be used," Bee said.

FILED UNDER **AFGHANISTAN, AWARDS, MARINES, MILITARY, PURPLE HEART, WAR HEROES**

Recommended by |

LATHAM & WATKINS^{LLP}

EXHIBIT C

Affidavit of Bobbie J. Bee

DECLARATION OF BOBBIE J. BEE IN SUPPORT OF THE PETITION OF WILLIAM O. BEE TO THE BOARD OF CORRECTION OF NAVAL RECORDS

I, Bobbie J. Bee, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over the age of 18 years. I live in Jacksonville, North Carolina.

2. I submit this declaration in support of my husband, William O. Bee's ("SSgt. Bee") Petition to the Board of Correction of Naval Records (Docket No. 3901-18). Each of the facts set forth in this declaration is true to my personal knowledge, and I am competent to testify on the matters stated herein.

3. I have been married to SSgt. Bee since April 2006 and have shared a home with SSgt. Bee since his return to the United States in 2010, following his final overseas deployment and injuries, to the present.

4. Prior to SSgt. Bee's discharge from the Marine Corps, in January 2013 while he was assigned to FMTB East, one of SSgt. Bee's superiors at FMTB East told me that I should keep all weapons and knives locked away in the home I and my son shared with SSgt. Bee. Such superior further indicated that I should sleep with our son, separately from SSgt. Bee, in a locked bedroom in order to prevent any possible violence.

I declare under penalty of perjury that the foregoing is true and correct.

Signature Page Follows

1
CONFIDENTIAL

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DRAFT

0023

Appx4025

LATHAM & WATKINS^{LLP}

EXHIBIT D

Affidavit of William O. Bee

**DECLARATION OF WILLIAM O. BEE IN SUPPORT OF HIS PETITION TO THE
BOARD OF CORRECTION OF NAVAL RECORDS**

I, William O. Bee, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over the age of 18 years. I live in Jacksonville, North Carolina.
2. I submit this declaration in support of my Petition to the Board of Correction of Naval Records (Docket No. 3901-18). Each of the facts set forth in this declaration is true to my personal knowledge, and I am competent to testify on the matters stated herein.
3. I enlisted in the United States Marine Corps in September 1999 and entered active duty in June 2000. I served primarily as a rifleman and ultimately achieved the rank of Staff Sergeant during my career with the Marines and was deployed four times in active duty combat roles in Afghanistan. During my final such deployment in June 2010, I was injured by an improvised explosive device blast and suffered a concussion. I was medically evacuated to Germany for treatment of the injuries sustained as a result of the blast, and was thereafter transferred to the United States, where I remained until my discharge in April 2013.
4. Prior to my discharge from the Marines in 2013, I was stationed at FMTB East in what my supervisors communicated to me would be a “break” in lieu of a fifth active duty deployment.
5. While I was stationed at FMTB East as an instructor, I experienced several bouts of vomiting and severe abdominal pain, at times while on duty. During such instances, my colleagues at FMTB East occasionally had to take over my classes when these symptoms were too severe for me to continue to communicate with the trainees under my supervision.
6. Also during my time at FMTB East, I was warned about my erratic behavior and overly harsh discipline of trainees under my supervision on the rifle range. My colleagues and

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CONFIDENTIAL

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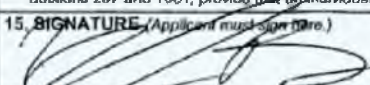
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superiors indicated to me that they were concerned that my conduct was becoming increasingly erratic over time.

I declare under penalty of perjury that the foregoing is true and correct.

Signature Page Follows

177		APPLICATION FOR CORRECTION OF MILITARY I UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, S <i>(Please read Privacy Act Statement and instructions on back BEFORE comp</i>				NR20180003901	
<p>The public reporting burden for this collection of information is estimated to average 30 minutes per response, including reviewing the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Project Director, Paperwork Project, Washington, DC 20503.</p> <p>RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.</p>							
1. APPLICANT DATA <i>(The person whose record you are requesting to be corrected.)</i>							
a. BRANCH OF SERVICE <i>(X one)</i>		ARMY	NAVY	AIR FORCE	<input checked="" type="checkbox"/> MARINE CORPS	COAST GUARD	
b. NAME <i>(Print - Last, First, Middle Initial)</i>		c. PRESENT OR LAST PAY GRADE		d. SERVICE NUMBER <i>(If applicable)</i>		e. SSN	
Bee, William O.		E-6				[REDACTED]	
2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES <i>(Active Duty, Reserve, National Guard, Retired, Discharged, Deceased)</i>		3. TYPE OF DISCHARGE <i>(If by court-martial, state the type of court.)</i>		4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY <i>(YYYYMMDD)</i>			
Discharged		Honorable		20130401			
5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED AS FOLLOWS: <i>(Entry required)</i>							
I request that my naval records be corrected to show that I should have qualified for disability retirement at the time of my discharge on April 1, 2013.							
6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: <i>(Entry required)</i>							
Please refer to the attached Brief and Exhibits thereto							
a. IS THIS A REQUEST FOR RECONSIDERATION OF A PRIOR APPEAL?		YES	b. IF YES, WHAT WAS THE DOCKET NUMBER?		c. DATE OF THE DECISION		
<input checked="" type="checkbox"/> NO							
7. ORGANIZATION AND APPROXIMATE DATE <i>(YYYYMMDD)</i> AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED <i>(Entry required)</i>							
20130401							
8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE							
a. DATE OF DISCOVERY <i>(YYYYMMDD)</i>		b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.					
20161129							
9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: <i>(If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)</i>							
Brief In Support of Application For Correction of Military Record Under 10 U.S.C. § 1552 and Exhibits listed therein							
10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. <i>(At no expense to the Government)</i> <input checked="" type="checkbox"/> YES. THE BOARD WILL DETERMINE IF WARRANTED.		<input type="checkbox"/> NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.					
11.a. COUNSEL <i>(If any)</i> NAME <i>(Last, First, Middle Initial)</i> and ADDRESS <i>(Include ZIP Code)</i>				b. TELEPHONE <i>(Include Area Code)</i>			
Mulliken, David L. and Griffin, Denis J. of Latham & Watkins LLP 12670 High Bluff Drive, San Diego, CA, 92130				(858)523-5400			
				c. E-MAIL ADDRESS			
				david.mulliken@lw.com			
				d. FAX NUMBER <i>(Include Area Code)</i>			
				(858)523-5450			
a. I WOULD LIKE ALL CORRESPONDENCE/DOCUMENTS SENT TO ME ELECTRONICALLY.				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name <i>(print)</i> and relationship by marking one box below.							
<input type="checkbox"/> SPOUSE		<input type="checkbox"/> WIDOW		<input type="checkbox"/> WIDOWER		<input type="checkbox"/> NEXT OF KIN	
<input type="checkbox"/> LEGAL REPRESENTATIVE		<input type="checkbox"/> OTHER <i>(Specify)</i>					
13.a. COMPLETE CURRENT ADDRESS <i>(Include ZIP Code)</i> OF APPLICANT OR PERSON IN ITEM 12 ABOVE <i>(Forward notification of all changes of address.)</i>				b. TELEPHONE <i>(Include Area Code)</i>			
204 Spinnaker Place Jacksonville, NC 28546				814-241-2788			
				c. E-MAIL ADDRESS			
				William.o.bee@gmail.com			
				d. FAX NUMBER <i>(Include Area Code)</i>			
14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>						CASE NUMBER <i>(Do not write in this space.)</i>	
15. SIGNATURE <i>(Applicant must sign here.)</i>						16. DATE SIGNED <i>(YYYYMMDD)</i>	
						20180425	
						MAY 03 2018	

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1552 and E.O. 9397, as amended (SSN).

PRINCIPAL PURPOSE(S): To initiate an application for correction of military record. The form is used by Board members for review of pertinent information in making a determination of relief through correction of a military record. Completed forms are covered by correction of military records SORNs maintained by each of the Services or the Defense Finance and Accounting Service. The DoD Systems of Records Notices can be located at: <http://dpclo.defense.gov/Privacy/SORNsIndex/DODComponentNotices.aspx>.

ROUTINE USE(S): The DoD Blanket Routine Uses at <http://dpclo.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx> may apply to this collection.

DISCLOSURE: Voluntary. However, failure by an applicant to provide the information not annotated as "optional" may result in a denial of your application. An applicant's SSN is used to retrieve these records and links to the member's official military personnel file and pay record.

Applicable SORNs:

- Army (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODComponentArticleView/tabid/7489/Article/6000/a0015-185-sfmr.aspx>)
- Navy and Marine Corps (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6510/nm01000-1.aspx>)
- Air Force (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/5904/f036-safpc-d.aspx>)
- Defense Finance and Accounting Service (<http://privacy.defense.gov/notices/dfas/T5015a.shtml>)
- Coast Guard (<http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/html/2011-27881.htm>)

Official Military Personnel Files:

- Army (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6131/a0600-8-104-ahrc.aspx>)
- Navy (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/6405/m01070-3.aspx>)
- Marine Corps (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODComponentArticleView/tabid/7489/Article/6775/m01070-6.aspx>)
- Air Force (<http://dpclo.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/5876/f036-af-pc-c.aspx>)
- Coast Guard (<http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/html/2011-27881.htm>)

INSTRUCTIONS

Under Title 10 United States Code Section 1552, Active Duty and Reserve Component Service members, Coast Guard, former Service members, their lawful or legal representatives, spouses of former Service members on issues of Survivor Benefit Program (SBP) benefits, and civilian employees with respect to military records other than those related to civilian employment, who feel that they have suffered an injustice as a result of error or injustice in military records may apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records. These Boards are the highest level appellate review authority in the military. The information collected is needed to provide the Boards the basic data needed to process and act on the request.

1. All information should be typed or printed. Complete all applicable items. If the item is not applicable, enter "None."
2. If space is insufficient on the front of the form, use the "Remarks" box below for additional information or attach an additional sheet.
3. List all attachments and enclosures in item 9. Do not send original documents. Send clear, legible copies. Send copies of military documents and orders related to your request, if you have them available. Do not assume that they are all in your military record.
4. The applicant must exhaust all administrative remedies, such as corrective procedures and appeals provided in regulations, before applying to the Board of Corrections.
5. ITEM 5. State the specific correction of record desired. If possible, identify exactly what document or information in your record you believe to be erroneous or unjust and indicate what correction you want made to the document or information.
6. ITEM 6. In order to justify correction of a military record, it is necessary for you to show to the satisfaction of the Board by the evidence that you supply, or it must otherwise satisfactorily appear in the record, that the alleged entry or omission in the record was in error or unjust. Evidence, in addition to documents, may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting the application. All evidence not already included in your record must be submitted by you. The responsibility of securing evidence rests with you.
7. ITEM 8. U.S. Code, Title 10, Section 1552b, provides that no correction may be made unless a request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.
8. ITEM 10. Personal appearance before the Board by you and your witnesses or representation by counsel is not required to ensure full and impartial consideration of your application. If the Board determines that a personal appearance is warranted and grants approval, appearance and representation are permitted before the Board at no expense to the government.
9. ITEM 11. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.
10. ITEM 12. The person whose record correction is being requested must sign the application. If that person is deceased or incompetent to sign, the application may be signed by a spouse, widow, widower, next of kin (son, daughter, mother, father, brother, or sister), or a legal representative that has been given power of attorney. Other persons may be authorized to sign for the applicant. Proof of death, incompetency, or power of attorney must accompany the application. Former spouses may apply in cases of Survivor Benefit Plan (SBP) issues.
11. For detailed information on application and Board procedures, see: Army Regulation 15-185 and www.arba.army.pentagon.mil; Navy - SECNAVINST.5420.193 and www.hq.navy.mil/bcnc/bcnc.htm; Air Force Instruction 36-2603, Air Force Pamphlet 36-2607, and www.afpc.randolph.af.mil/safmtr; Coast Guard - Code of Federal Regulations, Title 33, Part 52.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS	AIR FORCE	COAST GUARD
Army Review Boards Agency 251 18th Street South, Suite 385 Arlington, VA 22202-3531	Board for Correction of Naval Records 701 S. Courthouse Road, Suite 1001 Arlington, VA 22204-2490	Board for Correction of Air Force Records SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Department of Homeland Security Office of the General Counsel Board for Correction of Military Records 245 Murray Lane, Stop 0485 Washington, DC 20528-0485

17. REMARKS

**BEFORE THE BOARD
FOR CORRECTION OF NAVAL RECORDS**

<p><i>In the Matter of</i></p> <p>William O. Bee United States Marines</p> <p><i>Applicant.</i></p>	<p>Dkt. No.</p>
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**BRIEF IN SUPPORT OF APPLICATION FOR
CORRECTION OF MILITARY RECORD
UNDER 10 U.S.C. § 1552**

David Mulliken
Denis Griffin
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12670 High Bluff Drive
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Phone (858) 523-5400
Fax (858) 523-5450
Attorneys for Applicant

April 25, 2018

BRIEF IN SUPPORT OF APPLICATION

INTRODUCTION

William O. Bee, a native of Wooster, Ohio, enlisted in the United States Marine Corps on September 16, 1999 at the age of 17 and entered active duty on June 20, 2000. He was inspired to join the Marines by his family's distinguished record of military service, and his resolve was further bolstered in the aftermath of 9/11, after which he committed himself to do all he could to serve his country. Over the next 13 years, Bee served honorably with the Marines until his honorable discharge on April 1, 2013. While serving in the Marine Corps, he worked primarily as a rifleman and ultimately achieved the rank of Staff Sergeant ("SSgt."). As a result of his exemplary military service, SSgt. Bee received several medals and citations, for meritorious actions both as an individual and as a member of a unit that served with distinction in several intense combat zones. SSgt. Bee's awards included the Purple Heart, the Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device), the Enduring Freedom Combat Action Ribbon, the Presidential Unit Citation, three Navy Unit Commendations, two Navy Meritorious Unit Commendations and four Marine Corps Good Conduct Medals.¹

SSgt. Bee served in four high-risk active duty combat deployments in Afghanistan during the first decade of his service. His first deployment to Afghanistan came in the immediate aftermath of 9/11, extending from September 2001 to April 2002, followed by a second deployment from October 2002 to December 2002. His third deployment extended from December 2007 to September 2008, during which he earned the Navy Marine Corps Achievement Medal with the Combat V for service in Operation Areda Rosa, in which SSgt. Bee was wounded by sniper fire that caused a ricocheting stone to impact his head.

The fourth and final deployment from December 2009 to June 2010 proved to be the most damaging to SSgt. Bee's physical and mental health. SSgt. Bee experienced several traumatic events leading up to the events of his final injuries in Afghanistan, including: (i) a close friend was shot in the head and died in SSgt. Bee's arms; (ii) while SSgt. Bee was evacuating a gravely wounded fellow Marine to safety, that Marine also died during the helicopter evacuation; and (iii) an extended firefight with the Taliban during which SSgt. Bee almost ran out of ammunition and in which one of the men under his charge was struck by enemy fire. The trauma SSgt. Bee experienced in this deployment culminated in June, during SSgt. Bee's service in Operation Moshtarak in Marjah, Helmand Province. This was a volatile haven for Taliban fighters and a critical center for the enemy's production of improvised explosive devices ("IEDs"). While on duty in Marjah, three IEDs exploded along the exterior walls of a building that SSgt. Bee and other members of his squad were using as a forward observation area. SSgt. Bee was blown off of his feet and knocked unconscious for an extended period, requiring medical evacuation to Germany for the resulting brain damage, followed by further treatment in the US. Two of his fellow Marines positioned nearby were killed. Compounding the trauma, SSgt. Bee learned that the remains of the two men who were killed were stored in trash cans as the only option available at the time. Symptoms of traumatic brain injury ("TBI") became apparent almost immediately. SSgt. Bee also developed worsening symptoms of post-traumatic stress disorder ("PTSD") which would continue to manifest over time. As a result of the injuries and traumas suffered in

¹ Exhibits A and B

305C, 2015 WL 6781066, (Fed. Cl. Oct. 1, 2015) (“Such a claim [under 10 USC § 1552(b) to correct records] does not necessarily accrue at the time of separation of service. It accrues when the petitioner discovers the alleged error or injustice.”); see also *Russell v. U.S.*, No. 02-178C, 2002 U.S. Claims LEXIS 257, (Fed. Cl. Oct. 2, 2002) aff’d 65 Fed. Appx. 304 (2003). Further, because it was unfair and unlawful that SSgt. Bee was not granted a military retirement, it is in the interest of justice that the Board for Correction of Naval Records (“BCNR”) consider this application.

Because SSgt. Bee requests that his military records be corrected to reflect that he was medically retired with a permanent rating of 30% or greater, the BCNR is the only service body that can grant relief. In light of the above, this application is timely, and properly before the BCNR.

FACTUAL BACKGROUND

1.1 SSgt. Bee’s Military Service

SSgt. Bee began his service in the United States Marines with his enlistment on September 16, 1999. His first deployment began in Afghanistan one week after the events of September 11, 2001. SSgt. Bee would go on to serve for over 13 years, including four deployments in Afghanistan and a fifth at Naval Station Guantanamo Bay. His responsibilities included serving as a rifleman and as an infantry unit leader. During his service, SSgt. Bee was awarded several medals and citations including the Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device).¹

SSgt. Bee experienced several traumatic events over the course of his military career while on active duty, including several during his final deployment in Afghanistan in 2010. These included an incident where SSgt. Bee witnessed a fellow Marine and good friend be shot in the head. His friend subsequently died in SSgt. Bee’s arms as Bee and others attempted to rush him to safety for medical treatment. On a separate occasion, a fellow Marine who had been shot nearly died in SSgt. Bee’s arms as he and other service members were bringing him to a helicopter to be medically evacuated. Although they successfully brought him onto the helicopter to be evacuated, SSgt. Bee later learned that this second Marine died from his wounds in transit. On another occasion while on this deployment, SSgt. Bee and his men were engaged in a protracted firefight, during which he nearly ran out of ammunition and one of his men was struck by enemy fire.

During SSgt. Bee’s final deployment in Marjah, Afghanistan, two days before his deployment was scheduled to end, three IEDs planted outside a building that Bee and his squad were using as a forward observation area exploded. The explosions collapsed the building’s walls inward, knocking SSgt. Bee unconscious and killing two of his fellow Marines. SSgt. Bee suffered a TBI, ruptured both of his tympanic membranes, and remained unconscious for between 20 and 30 minutes. He subsequently learned that the remains of his fellow Marines who had perished in the blast were initially stored in trash cans, adding to the psychological trauma of the event. He

¹ Exhibit A

A letter dated October 10, 2013 from the Department of Veterans Affairs (“VA”) notified SSgt. Bee of its proposed VA Rating Decision. It found disability ratings of 70% for each of SSgt. Bee’s PTSD and his TBI.¹⁴

The VA assigned an evaluation of 70% for SSgt. Bee’s PTSD, general anxiety disorder, panic disorder with agoraphobia, and major depressive disorder (claimed as PTSD, depression) based on the following factors:

- Impaired impulse control
- Near-continuous panic affecting the ability to function independently, appropriately and effectively
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Disturbances of motivation and mood
- Flattened affect
- Chronic sleep impairment
- Anxiety
- Suspiciousness
- Depressed mood
- The examiner’s assessment of SSgt. Bee’s mental functioning, which is partially reflected in his Global Assessment of Function score of 40.

The letter explained further that a Global Assessment Function score in the range of SSgt. Bee’s score indicates “some impairment in reality testing or communication; or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood.”

With respect to SSgt. Bee’s TBI, the VA also assigned a 70% evaluation based on a finding of a “3” level of severity out of a possible 0-3 for his memory, attention, concentration, executive functions facet, based on objective evidence, resulting in “moderate functional impairment.” The VA additionally found moderately impaired judgment, frequently inappropriate social interaction, occasional disorientation, mild or moderate difficulties with motor activity, moderate impairment of visual spatial orientation, neurobehavioral effects that frequently interfere with but do not preclude workplace and/or social interactions, and more than occasional inability to communicate or understand communication.

As described in greater detail in the section below, these service-connected disabilities delineated by the VA, should have resulted in an MEB prior to SSgt. Bee’s discharge from active duty in 2013. The Navy erred by not ensuring an MEB was convened to evaluate SSgt. Bee’s disabilities, despite the overwhelming evidence available in 2010, showing that his TBI and PTSD were, at a minimum, very likely to comprise permanently unfitting conditions, and had an MEB been convened, it should have referred the conditions to an informal PEB, which in turn

¹⁴ Exhibit J

would have had sufficient grounds to determine that both SSgt. Bee's TBI and PTSD were each separately unfitting Category I conditions.

ARGUMENT

The Navy erred by not medically retiring SSgt. Bee with a combined disability rating of 30% or higher based on his diagnosis of TBI and PTSD, which would have entitled him to monthly military disability retirement and Tricare. Specifically, the Navy erred by not convening an MEB to evaluate SSgt. Bee's TBI and PTSD conditions. If such an MEB had been convened, it should have referred the conditions to an informal PEB. The PEB should have evaluated the conditions and determined that the TBI and PTSD conditions were each separately unfitting Category I conditions. Although SSgt. Bee's TBI and PTSD at the time of his discharge each separately rendered him unfit for military duty, as was subsequently found by VA evaluations of these conditions, no MEB was convened. These evaluations subsequent to the discharge found SSgt. Bee's disability rating related to his TBI to 70% and the PTSD to 70%, each of which indicates a major impairment and strongly substantiates a separately unfitting condition. A subsequent medical evaluation also found that had an MEB been convened at the time of SSgt. Bee's discharge, it would have found that SSgt. Bee would not have been fit for duty as a rifleman or an infantry squad leader in the Marine Corps. The BCNR has the power to make changes to naval records when necessary to correct an error or to eliminate an injustice.¹⁵

A. The Marines erred by not convening an MEB, contrary to the procedures specified in NAVMED and MARCORSEPMAN

According to Marine Corps and Navy manuals and published procedures, an MEB shall be initiated where a Marine presents with a condition likely to significantly interfere with his duties or where a Marine is unlikely to return to full duty within a reasonable period of time.¹⁶ The Manual of the Medical Department U.S. Navy ("NAVMED") specifies that an MEB *shall* be convened where a physician determines that any of the following conditions are met:

- (a) A member has a condition that appears to significantly interfere with performance of duties appropriate to the member's office, grade, rank, or rating;
- (b) A member has a condition that will prohibit returning the patient to his or her parent command in a medically unrestricted duty status following appropriate light duty; [or]
- (c) A member has a condition that may seriously compromise the member's health or well-being if the member were to remain in the military service (e.g., continued service would likely result in extended hospitalization(s), requirements for close medical supervision, or potential aggravations of the existing condition).¹⁷

Here, the contemporaneous record shows that each of conditions (a), (b) and (c) were met and the Navy was aware of such conditions. While receiving treatment in Germany in June 2010

¹⁵ 10 U.S.C. §1552 and 32 C.F.R. §723.3.

¹⁶ NAVMED, 18-4(2), 18-4(4), MARCORSEPMAN 1900.16-8102, 1900.16-8104; see also Department of Defense Instruction Number 1332.38.

¹⁷ NAVMED, 18-4(2) (a)-(c)

immediately following the three-IED blast, as evidenced by contemporary medical records, SSgt. Bee presented with two ruptured eardrums, memory loss, nausea, vomiting, dizziness, decreased concentration, and sleep disturbances so severe he was prescribed 50 mg of quetiapine fumarate to mitigate the intrusive post-traumatic nightmares.¹⁸ Subsequent to his diagnosis and treatment in Germany, SSgt. Bee was placed on LIMDU.¹⁹ On July 28, 2010, during his period of LIMDU, SSgt. Bee was provided an initial psychological evaluation that resulted in a diagnosis of Adjustment Disorder with depressed mood.²⁰ At follow-up visits at Camp LeJeune in August 2010, SSgt. Bee continued to present with difficulty walking and vertigo with a wobbly and unsteady gait, tinnitus, hearing loss and multiple perforations in both ears.²¹ By October 2010, SSgt. Bee presented with memory issues or lapses, balance problems and dizziness, ringing in ears, sensitivity to light, irritability, headaches and sleeping difficulties. Despite these symptoms, SSgt. Bee was released from LIMDU on October 12, 2010, without ever having a proper TBI evaluation. It was only on October 28, 2010, 16 days after his release from LIMDU, that SSgt. Bee was properly evaluated for TBI, which revealed “potential TBI with persistent symptoms.” After this initial evaluation, SSgt. Bee was not referred for additional TBI evaluation.²² Prior to his discharge in 2013, SSgt. Bee’s medical records show that he continued to suffer from the effects of his TBI and PTSD, including anxiety, insomnia, difficulty walking, and lapses in memory.²³ Given the persistence of these and other symptoms, the Marine Corps should have recognized that SSgt. Bee was entitled to MEB review of his conditions.

Despite all of the foregoing, and contrary to NAVMED 18-4(2), no MEB was ever initiated. Indeed, although the Marine Corps clearly recognized that SSgt. Bee could not be returned to his MOS as a rifleman from his injury in 2010 through the date of his discharge in 2013, the Marines nevertheless only finally seemed to admit the severity of SSgt. Bee’s injuries when he was awarded his Purple Heart a stunning three years after his discharge and six years after sustaining his injuries in combat.²⁴

Similarly, the Marine Corps Separation & Retirement Manual (“MARCORSEPMAN”) specifies that an MEB’s purpose is “to evaluate a Marine where doubt exists concerning the Marine’s state of health.”²⁵ Given the extensive history of SSgt. Bee’s serious symptoms at the time of his discharge stemming from his injuries sustained in combat, as well as the incongruities present in his performance reports relating to his time on LIMDU and in alternate duty assignment thereafter,²⁶ as detailed above, it is clear that there was significant doubt as to SSgt. Bee’s state of health at the time of his discharge. Therefore, an MEB to evaluate SSgt. Bee’s health prior to his discharge was warranted under the standards set forth in MARCORSEPMAN.

¹⁸ Exhibit K

¹⁹ Exhibit L

²⁰ Exhibit M

²¹ Exhibit N

²² Exhibit O

²³ Exhibit P

²⁴ Exhibit E

²⁵ MARCORSEPMAN 8202.2.

²⁶ Exhibit H

The failure to convene an MEB was the crucial error that prevented SSgt. Bee from availing himself of the process and procedural protections of the established Disability Evaluation System. An MEB is the body tasked with determining whether the Marine has any conditions that would require referral to the PEB.

In addition, the failure to convene an MEB has made it more difficult for SSgt. Bee to document his unfitting service-connected conditions. An MEB normally prepares a Medical Evaluation Board Report or Narrative Summary, which documents all of the Marine's medical conditions. In addition, the Marine's commander provides a Non-Medical Assessment ("NMA") which assesses the Marine's performance of duty in light of his medical conditions. The NMA provides evidence of the Marine's ability to perform independent of the physician's clinical estimate. Because an MEB was never convened, SSgt. Bee does not have the benefit of either a Medical Evaluation Board Report or an NMA to help demonstrate that his conditions merited a PEB and ultimately a disability retirement. Nevertheless, the contemporary records and subsequent documentation emphatically indicate a disability retirement was the only proper response to SSgt. Bee's unfitting conditions. Because (1) the procedures described in NAVMED and MARCORSEPMAN were not followed and (2) the failure to convene an MEB deprived SSgt. Bee of the opportunity to develop evidence of his unfitting conditions, SSgt. Bee was excluded from the Disability Evaluation System, and ultimately discharged at the end of his service term, without the required due process.

B. Had an MEB been convened, it should have referred SSgt. Bee's condition to an IPEB

Marine and Navy manuals specify detailed procedures to be undertaken when an MEB is convened, and under what circumstances a Marine is to be forwarded to the MEB process and onward to the PEB for further disability processing.²⁷ Because an MEB was never ordered in SSgt. Bee's case, these procedures were not followed. If an MEB had been conducted, as discussed immediately below, the matter would have had to be referred to a PEB for further processing.

The chief determination that would have been reached if SSgt. Bee had been given an MEB is whether it was likely he would return to full duty. If a Marine is unlikely to return to full duty in a reasonable period of time (denoted as usually up to a cumulative total of 12 months), an MEB is required to be completed, and the matter is to be forwarded to the PEB for a determination of fitness to continue naval service.²⁸ SSgt. Bee was placed on LIMDU immediately following the June 2010 IED incident to September 2010. He was told that he would not receive his planned promotion on October 1, 2010 if he was still on LIMDU, so he requested to be released from official limited duty. Nonetheless, SSgt. Bee was assigned alternative duties for the remainder of his term of service, including office work at SACO and assignments at FMTB East. SSgt. Bee was told him his transfer to FMTB would be a "break" for him and that he would not be deployed or be assigned to a combat deployable unit for the remainder of his service. The evidence available during SSgt. Bee's initial evaluations during the summer of 2010 indicated a strong likelihood he would not be able to return to full duty in a reasonable period of time, and

²⁷ MARCORSEPMAN 1900.16-8100 et seq.

²⁸ MARCORSEPMAN 1900.16-8102

the subsequent years during which he was placed on alternative duty assignments verify this likelihood, as does the representations made by the Marines to him that he would not be deploying or deployable for the remainder of his service term. These factors together strongly indicated the need for an MEB in 2010, and further seem to indicate an implicit understanding by the Marine Corps that SSgt. Bee was unlikely to be found fit for active duty from his injury in June 2010 through the subsequent years until his discharge in 2013, as indicated by what was in effect an informal extension of SSgt. Bee's LIMDU status by his placement on alternative duty assignments.

When an MEB determines that a veteran has injuries that significantly interfere with the performance of military duties, and are unlikely to be remedied by a period of LIMDU, the case is referred to the IPEB. Where the MEB decides that a Service member's injuries can be remedied with time and treatment, the Service member will be placed on LIMDU. Here, LIMDU would not be indicated, as there was no basis for a determination that with time and treatment, SSgt. Bee would be expected to return to full duty as a rifleman. As noted by the NAVMED, "[p]lacement on LIMDU is most appropriate only for those patients for whom a return to medically unrestricted status is anticipated."²⁹ Further, under MARCORSEPMAN guidelines, where an MEB evaluation results in a determination that a Marine's ability to meet the requirements of active service is "questionable," the MEB should be referred to the PEB.³⁰ Based upon the severe and persistent nature of SSgt. Bee's symptoms, many of which continue to this day, any determination that a return to medically unrestricted status could be expected and that the prospect of such return would not be at least "questionable" would have been unreasonable. Retrospectively, the record shows that SSgt. Bee was permanently unable to return to full duty in his MOS, and was instead reassigned to duties outside his MOS and experience. As a result, had an MEB been convened, such MEB should have determined that SSgt. Bee's case should be referred to an IPEB.]

C. Had an IPEB reviewed SSgt. Bee's condition, it should have found his TBI condition a separately unfitting condition

If SSgt. Bee's conditions had been referred to an IPEB, it should have found that SSgt. Bee's TBI was a condition that was separately unfitting, and a contributing disability to the ultimate decision of an unfitting condition. The IPEB is required to determine whether a condition makes a Sailor or Marine unfit for continued military service and if so, the IPEB requests a disability rating from the VA in accordance with the VA Schedule of Rating Disabilities ("VASRD"). A condition is unfitting if "the medical disease or condition underlying the diagnosis actually interferes significantly with the member's ability to carry out the duties of his or her office, grade, rank or rating." SECNAVINST 1850.4E, Enclosure 1, para. 1004(a).

According to the Military Occupational Specialties Manual ("MOS Manual") published by the Navy, as a rifleman and a sergeant in the Marine Corps, SSgt. Bee's duties would require him to act in a combat role as part of the "primary scouts, assault, and close combat forces" of the Marine Corps.³¹ Additionally, as an Infantry Unit Leader, SSgt. Bee would be responsible for

²⁹ NAVMED 18-10(1) (a)

³⁰ MARCORSEPMAN 1900.16-8202.2

³¹ MOS Manual 3110.3

assisting in the “planning, training, deployment and employment of all infantry organic weapons systems and the units combat power capabilities” and for supervising the “establishment and operation of unit command and control to include the integration and synchronization of the warfighting function” among other duties.³² In order to qualify for service in this role, Marines must: (i) possess a General Technical score of 90 or higher; (ii) be able to perform three pull-ups, run 1.5 miles in 13 minutes and 30 seconds, perform 44 crunches and 45 ammo can lifts in order to meet the applicable Initial Strength Test requirements, and (iii) perform six pull ups, a 24 minute and 51 second three mile run, complete a maneuver under fire course in three minutes and 12 seconds, complete a movement to contact course in three minutes and 26 seconds, and perform 60 ammo can lifts in order to meet MOS Classification Standards. All infantrymen must be capable of “embarking aboard and fighting from helicopters, assault amphibian tractors, motorized vehicles and small boats” in addition to being able to fight on foot.³³

At the time of his transfer to LIMDU due to his suffering from recurrent vertiginous episodes following his TBI sustained in Marjah and throughout the remainder of his career with the Marines, SSgt. Bee experienced the kind of symptoms that would clearly have prevented his return to active duty as a rifleman and sergeant and fulfilling the duties and measuring up to the qualifications outlined above. As noted in the documentation of SSgt. Bee’s physical examination prior to discharge in February of 2013, SSgt. Bee continued to suffer from a “constant state of vertigo” in addition to frequent headaches, anxiety in environments outside of his home, continued loss of memory surrounding the events of his TBI in June 2010, “constant mood swings and/or depression as well as periods of extreme rage for no reason,” along with a myriad of other physical and mental symptoms relating to his service with the Marine Corps and his TBI.³⁴ Of particular note is the reported continued experience of a “constant state of vertigo” – the same reason that was expressly listed as the cause for which SSgt. Bee was originally placed on LIMDU following his TBI in 2010.³⁵ Because SSgt. Bee’s brain injuries resulted in an inability to perform the duties of his rank and MOS, especially due to this constant state of vertigo, as well as the frequent mood swings, headaches, anxiety and other symptoms stemming from his diagnosed conditions of a TBI, had an IPEB evaluated SSgt. Bee’s TBI condition, it would have erred by not finding the condition as unfitting. If the TBI had been found to be unfitting, the IPEB would have been required per 10 U.S.C. §1216a to adopt one or more of the VA’s ratings related to the TBI condition complex and include those ratings in the calculation for SSgt. Bee’s total disability rating.

D. Had an IPEB reviewed SSgt. Bee’s condition, it should have found his PTSD condition a separately unfitting condition

If SSgt. Bee’s conditions had been referred to an IPEB, it should have found that SSgt. Bee’s PTSD was a condition that was separately unfitting, and a contributing disability to the ultimate decision of an unfitting condition. Here, the record shows that the PTSD condition interfered with SSgt. Bee’s ability to perform the tasks of his position. With respect to his fitness for

³² *Id.* at 3110.20

³³ *Id.* at 3110.1 and 3110.3

³⁴ Exhibit Q

³⁵ Exhibit G

retention, SSgt. Bee's VA examinations for PTSD revealed severe anxiety and impairment related to the condition and resulted in a conclusion that he has "[o]ccupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking or mood" "[n]ear continuous panic or depression affecting the ability to function independently, appropriately and effectively," "[c]hronic sleep impairment" and "[i]mpairment of short- and long-term memory, for example, retention of only highly learned material, while forgetting to complete tasks".³⁶ In November 2010, SSgt. Bee was assigned to SACO, engaged in office work while the Marines planned a move for him to FMTB East and was experiencing headaches two to three times a week, equilibrium and nausea problems, short term memory problems and nightmares, and the medications prescribed to treat the TBI-induced nausea were profoundly sedating.³⁷ A January 4, 2013 follow-up visit at Camp Johnson listed an array of conditions including major depression, overweight, emotional lability, insomnia, anxiety, memory lapses or loss, and late effect of intracranial injury.³⁸ Furthermore, the initial VA review found that SSgt. Bee unquestionably met the criteria of suffering from PTSD. Subsequent VA evaluations confirmed the seriousness of the condition, prompting the VA to assign a PTSD rating of 70% disabling, based on "[o]ccupational and social impairment", "near-continuous panic", "chronic sleep impairment", anxiety, "impaired impulse control" and a range of other symptoms, all showing profound unfitness related to the PTSD.³⁹ A disability rating of 70% for PTSD further indicates symptoms such as "suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence) spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances...; [and] inability to establish and maintain effective relationships."⁴⁰

SSgt. Bee's PTSD led to avoiding and isolating himself socially. After discharge through to today, his PTSD symptoms have continued to pose a significant impediment to his daily life, such that he is unable to take a job in the civilian sector. Dr. Michael Blumenfield, a board certified physician in the fields of psychiatry and psychosomatic medicine by the American Board of Psychiatry and Neurology, reviewed relevant records of SSgt. Bee's medical history and conducted an interview with SSgt. Bee via Skype videoconference. Dr. Blumenfield noted in his report that it was clear that the TBI sustained by SSgt. Bee "is clearly linked to [his] development of post-traumatic stress," and further noted that "it is well-known that a TBI makes a person less likely able to deal with the psychological consequences related to post traumatic stress." Dr. Blumenfield concluded in his written report that "it is clearly documented that after [SSgt. Bee's] injury in 2010 through the time period in which he was discharged, he would not have been able to fulfill the duties as a rifleman in the Marine Corps" and that he believed "that if a full medical board had been convened and given the clinical facts documented in [SSgt.

³⁶ Exhibit C

³⁷ Exhibit R

³⁸ Exhibit S

³⁹ Exhibit J

⁴⁰ 38 C.F.R. § 4.130.

Bee's] record that they would have found that [SSgt. Bee] was not fit for duty as a rifleman in the Marine Corps."⁴¹

Other new research in this field has found a clear link, in particular, between TBIs sustained by service members as a result of proximity to concussive "invisible wave of energy" resulting from explosive blasts. A recent segment aired by CBS on "60 Minutes" on April 1, 2018 focused on the research of Dr. Daniel Perl, a neuropathologist overseeing the brain tissue repository at the Uniformed Services University of the Health Sciences in Bethesda, Maryland. Dr. Perl's research has uncovered a "previously unknown form of brain injury" linked to being proximately exposed to high intensity blast waves resulting from explosions, such as from IEDs. Dr. Perl also noted that his research has appeared to show a link between these injuries and PTSD.⁴² Given SSgt. Bee's close exposure to the IED that wounded him in June 2010, Dr. Perl's research further substantiates the link between SSgt. Bee's TBI and PTSD diagnoses and symptoms.

Following on VA Training Letter 09-01, now superseded by the updated M21-1 manual, the VA has repeatedly confirmed the need for a more comprehensive approach to TBI and recognizes the rating decision difficulties implicated by co-morbid TBI and behavioral/emotional symptoms including chronic depression, anxiety and PTSD.⁴³ "A TBI claim mentioning a specific traumatic event must be sympathetically read as a claim for SC for all disabling chronic residuals of the event."⁴⁴ Here, the VA noted in SSgt. Bee's case, that symptoms that may have been attributable to the TBIs were only included in the PTSD rating, diminishing the rating and fitness evaluation for the separate TBI rating, despite the fact SSgt. Bee noted the specific traumatic events that led to the TBI and PTSD emotional and behavioral symptoms.⁴⁵ As stated above, Dr. Blumenfield's report also noted a clear link between SSgt. Bee's TBI and PTSD, which is further established by Dr. Perl's research described in the "60 Minutes" segment. As a result of the overlapping symptoms of PTSD and the TBIs, the Marine Corps erred by not properly weighing SSgt. Bee's conditions in determining whether an MEB was needed, and therefore whether an IPEB should evaluate the conditions as unfitting. The Marines may have erroneously viewed the TBI evaluation as less serious because several of SSgt. Bee's most severe TBI symptoms, such as major depression, anxiety, emotional liability and sleep disturbances were captured under the heading of PTSD or other psychological issues, rather than under the neurological issues stemming from SSgt. Bee's TBI.⁴⁶ The facts of SSgt. Bee's condition would likely have been more fairly evaluated under diagnostic code 8045 (residuals of TBI - neurobehavioral effects facet) rather than PTSD, as PTSD ratings have been viewed with some skepticism due to lack of objective physical evidence and testing. Comparing SSgt. Bee's condition with the VA criteria under the TBI neurobehavioral effects facet, the record shows SSgt. Bee had several symptoms that each alone "interfere with or preclude workplace interaction, social interaction, or both on most days" examples of which include "irritability... lack of motivation... apathy, lack of

⁴¹ Exhibit T

⁴² CBS. 60 Minutes. *Mancini's Brain: How IEDs May Be Physically Causing PTSD*. (2018, April 1). Retrieved from <https://www.cbsnews.com/news/brian-mancini-brain-how-ieds-may-be-physically-causing-ptsd/>

⁴³ M21-1, Part III, Subpart iv, Chapter 4, Section G, *Department of Veterans Affairs*

⁴⁴ *Id.* at III.iv.4.G.3.a.

⁴⁵ Exhibit J

⁴⁶ Exhibit I

empathy, moodiness... inflexibility.” Regardless of what heading they were viewed under, however, all of these symptoms have been demonstrated in the facts above, and together show that an IPEB would have erred by not finding the behavioral/emotional symptoms unfitting, whether under the TBI rubric or under the PTSD designation.⁴⁷

As the foregoing facts show SSgt. Bee’s PTSD caused him to be unfit for military service, the IPEB should have classified the PTSD as a Category I condition. If such classification had been made, the PEB would have likely been required to adopt the VA’s rating of 70% for the PTSD and include that rating in the calculation for SSgt. Bee’s total disability rating. Alternatively, the same overlapping symptoms could have been evaluated under the residuals of TBI diagnostic code, which would also have resulted in finding an unfitting condition as a result of the neurobehavioral effects of the TBIs.

E. SSgt. Bee Should Be Entitled to Military Disability Retirement and Tricare

A Service member who is provided a combined disability rating of 30% or higher for one or more unfitting condition(s) is eligible for a military disability retirement. 10 U.S.C. § 1201. If an MEB had been convened and referred his conditions to an IPEB, and the IPEB had properly evaluated SSgt. Bee’s service-related conditions in accordance with Naval regulations, prior decisions of the BCNR and relevant case law, he would have been entitled to monthly military disability retirement and Tricare.

⁴⁷ U.S. Dep’t of Veteran Affairs, Traumatic Brain Injury (TBI) Examination Comprehensive Version at Section C.14.VIII Neurobehavioral effects, <http://benefits.va.gov/PREDISCHARGE/DOCS/disexm58.pdf> (last visited April 2, 2018).

RELIEF REQUESTED

SSgt. William Bee respectfully requests that the BCNR correct his naval records to show that he should have qualified for disability retirement at the time of his discharge on April 1, 2013. Specifically, he should have been separated from the military after having been found unfit for further military service due to the: (1) traumatic brain injury suffered in a combat zone; and (2) PTSD related to the incident that resulted in the TBI, which together were more than 30% disabling.

In light of the above, SSgt. Bee's discharge from the Navy was both unfair and unlawful, because he should have been found unfit for further military service due to conditions that were more than 30% disabling. SSgt. Bee respectfully requests that his military record be corrected accordingly.

Should the Board not see fit to grant SSgt. Bee the relief he seeks, he requests a clear record of the Board's findings and holdings, so that an immediate appeal can be taken to the appropriate tribunal.

DATED: April 25, 2018

Respectfully submitted,

LATHAM & WATKINS LLP

David Mulliken

Denis Griffin

By: s/ Denis Griffin

Denis Griffin

Attorneys for Applicant

SSgt. William O. Bee

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES THIS IS AN IMPORTANT RECORD. SAFEGUARD IT. ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY																																										
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19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) 304 KINGSTON RD, JACKSONVILLE, NC, 285460010		b. NEAREST RELATIVE (Name and address - include Zip Code) BOBBIE J BEE (SPOUSE), 304 KINGSTON ROAD, JACKSONVILLE NC 28546																																								
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**Initial Post Traumatic Stress Disorder (PTSD)
Disability Benefits Questionnaire**
** Internal VA or DoD Use Only**

Name of patient/Veteran: <u>BEE, WILLIAM</u>	SSN: <u>xxx-xx-xxxx</u>
<p>This form is for use only by VHA, DoD, and VBA staff and contract psychiatrists or psychologists who have been certified to perform Initial PTSD Evaluations. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim. Please note that this questionnaire is for disability evaluation, not for treatment purposes.</p> <p>NOTE: If the Veteran experiences a mental health emergency during the interview, please terminate the interview and obtain help, using local resources as appropriate. You may also contact the Veterans Crisis Line at 1-800-273-TALK(8255). Stay on the Crisis Line until help can link the Veteran to emergency care.</p> <p>In order to conduct an initial examination for PTSD, the examiner must meet one of the following criteria: a board-certified or board-eligible psychiatrist; a licensed doctorate-level psychologist; a doctorate-level mental health provider under the close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist; a psychiatry resident under close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist; or a clinical or counseling psychologist completing a one-year internship or residency (for purposes of a doctorate-level degree) under close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist.</p>	
SECTION I:	
<p>1. Diagnostic Summary This section should be completed based on the current examination and clinical findings.</p> <p>Does the Veteran have a diagnosis of PTSD that conforms to DSM-IV criteria based on today's evaluation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No ICD code: <u>309.81</u> If no diagnosis of PTSD, check all that apply: <input type="checkbox"/> Veteran's symptoms do not meet the diagnostic criteria for PTSD under DSM-IV criteria <input type="checkbox"/> Veteran does not have a mental disorder that conforms with DSM-IV criteria <input type="checkbox"/> Veteran has another Axis I and/or II diagnosis. Continue to complete this Questionnaire and/or the Eating Disorders Questionnaire.</p>	
<p>2. Current Diagnoses</p> <p>a. Diagnosis #1: <u>PTSD</u> ICD code: <u>309.81</u> Indicate the Axis category: <input checked="" type="checkbox"/> Axis I <input type="checkbox"/> Axis II Comments, if any: <u>Suffers from numerous PTSD symptoms, including most of those in all three major symptom clusters. The Claimant fully meets criteria for PTSD.</u></p> <p>Diagnosis #2: <u>Primary Insomnia</u> ICD code: <u>307.42</u> Indicate the Axis category: <input checked="" type="checkbox"/> Axis I <input type="checkbox"/> Axis II Comments, if any: <u>The Claimant, on average, only achieves approximately 4 hours of sleep per night. The sleep is usually non-continuous, i.e. is interrupted by intrusive, disturbing thoughts, images, dreams, and/or merely by the habitual pattern of disrupted sleep. There is an inadequate amount, and deficient quality, of sleep. His sleep is non-restorative.</u></p>	
Claimant name: BEE, WILLIAM	Account #: 3037604.1.3
Date of Examination: 01/23/2013	

DocuSign Envelope ID: 95BC0D1C-B617-41A9-B105-6FA2F9FF5DC7

**Initial Post Traumatic Stress Disorder (PTSD)
Disability Benefits Questionnaire**
** Internal VA or DoD Use Only**

Diagnosis #3: Generalized Anxiety Disorder
 ICD code: 300.02
 Indicate the Axis category:
 Axis I Axis II
 Comments, if any: He experiences persistent, intrusive, and disruptive symptoms of anxiety on a daily basis, symptoms which include: being on edge; ill-at-ease; tense; shaky; jumpy; nervous; and apprehensive.

Diagnosis #4: Panic Disorder with Agoraphobia
 ICD code: 300.21
 Indicate the Axis category:
 Axis I Axis II
 Comments, if any: He experiences recurrent episodes of intense, panic-level anxiety. Functioning outside of a gradually narrowing comfort zone (Agoraphobia) causes considerable distress, which he has endured many times in order to do what is required of him. Currently, the Panic Anxiety Episodes occur on an almost continuous basis. His panic episodes include: pounding heart; sweating; shortness of breath; trembling; and sense of impending doom.

If additional diagnoses, describe (using above format): Diagnosis #5: Major Depressive Disorder, Single Episode, Moderate, Without Psychotic Features
 ICD code: 296.22; Axis category: X Axis I Axis II
 Comments: The Major Depressive Disorder involves a chronically high level of dysphoric mood, loss of interest in normal activities, self doubt, feelings of worthlessness, anhedonia, anergia, and intermittent hopelessness about ever getting well and being able to function again. There were times after his last Afghanistan deployment when he was contemplating suicide. He denies any recent or current suicidal thoughts or intent.

b. Axis III - medical diagnoses (to include TBI): As stated in VERIS II and/or the VBA Case Assignment Sheet: "Foot Condition; Ankle Condition; Knee Condition; Hip Condition; Spine Condition; Shoulder Condition; Hand Condition; Wrist Condition; Gastrointestinal Condition; Heartburn Condition; Headaches Condition; Prostate Condition; Erectile Dysfunction Condition; Hearing Loss Condition; Tinnitus Condition"
 ICD code: _____
 Comments, if any: _____

c. Axis IV - Psychosocial and Environmental Problems (describe, if any): Deployment-related, and other service-related, symptoms and conditions; imminent transition to civilian environment; seeking post-military employment and education; significant concern about overall health, emotional and physical; entered the military in excellent health, but departing in diminished health.

d. Axis V - Current global assessment of functioning (GAF) score: 40
 Comments, if any: _____

3. Differentiation of symptoms
 a. Does the Veteran have more than one Mental disorder diagnosed?
 Yes No
 If yes, complete the following question:
 b. Is it possible to differentiate what symptom(s) is/are attributable to each diagnosis?
 Yes No Not applicable (N/A)
 If no, provide reason that it is not possible to differentiate what portion of each symptom is attributable to

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each diagnosis: _____
 If yes, list which symptoms are attributable to each diagnosis: The symptoms of each condition can be delineated from the symptoms of any other condition.

The PTSD includes chronic, severe symptoms of intrusive revivification or re-experiencing; avoidance of possible triggering factors, with numbing of responsiveness; and hyperarousal of the autonomic nervous system

Primary Insomnia is severe and chronic, resulting in inadequate amounts of sleep and an inability to achieve restorative sleep.

The Generalized Anxiety Disorder involves chronic, nagging anxiety, often creating a state of apprehension, physical tension and worry, ruminative thinking, fear and a state of uneasiness.

The Panic Disorder (With Agoraphobia) brings severe, acute anxiety which can be temporarily debilitating and far-reaching in its effects upon the Claimant's life. It limits his mobility and makes it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone.

The Major Depressive Disorder involves a chronically high level of dysphoric mood, loss of interest in normal activities, self doubt, feelings of worthlessness, anhedonia, anergia, and intermittent hopelessness about ever getting well and being able to function again.

c. Does the Veteran have a diagnosed traumatic brain injury (TBI)?
 Yes No Not shown in records reviewed Comments, if any: _____
 If yes, complete the following question:

d. Is it possible to differentiate what symptom(s) is/are attributable to each diagnosis?
 Yes No Not applicable (N/A)
 If no, provide reason that it is not possible to differentiate what portion of each symptom is attributable to each diagnosis: _____
 If yes, list which symptoms are attributable to each diagnosis: In addition to the differentiations delineated above, the TBI includes serious memory deficits, visual spatial disturbances, apraxia, communicational deficits, increased verbal explosiveness, social aversion, and impaired executive functioning.

4. Occupational and social impairment
 a. Which of the following best summarizes the Veteran's level of occupational and social impairment with regards to all mental diagnoses?
 (Check only one)

- No mental disorder diagnosis
- A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication
- Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or, symptoms controlled by medication
- Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation
- Occupational and social impairment with reduced reliability and productivity
- Occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and/or mood
- Total occupational and social impairment

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b. For the indicated level of occupational and social impairment, is it possible to differentiate what portion of the occupational and social impairment indicated above is caused by each mental disorder?
 Yes No no other mental disorder has been diagnosed

If no, provide reason that it is not possible to differentiate what portion of the indicated level of occupational and social impairment is attributable to each diagnosis: It is not possible to differentiate what specific portion of the occupational and social impairment is attributable to each diagnosis because the multiple diagnoses are highly interconnected and are all contributory to the impairment.

If yes, list which portion of the indicated level of occupational and social impairment is attributable to each diagnosis: _____

c. If a diagnosis of TBI exists, is it possible to differentiate what portion of the occupational and social impairment indicated above is caused by the TBI?
 Yes No no diagnosis of TBI

If no, provide reason that it is not possible to differentiate what portion of the indicated level of occupational and social impairment is attributable to each diagnosis: _____

If yes, list which portion of the indicated level of occupational and social impairment is attributable to each diagnosis: The occupational and social impairment is attributable to the following: 50% to TBI and the remaining 50% collectively to the additional mental health diagnoses (PTSD, Insomnia, GAD, Panic Disorder, and Major Depressive Disorder).

**SECTION II:
Clinical Findings:**

1. Evidence review

In order to provide an accurate medical opinion, the Veteran's claims folder must be reviewed.

Was medical evidence available for review as part of this examination?

Yes No

If yes, indicate evidence reviewed as part of this examination (check all that apply):

VA claims file (C-file)

If checked, documents listed separately below that are included in a C-file ~~do not need to be additionally indicated.~~

Veterans Health Administration medical records (VA treatment records)

Civilian medical records

Military service treatment records

Military service personnel records

Military enlistment examination

Military separation examination

Military post-deployment questionnaire

Department of Defense Form 214 Separation Documents

Previous disability decision letters

Correspondence and non-medical documents related to condition

Interviews with collateral witnesses (family and others who have known the Veteran before and after military service)

Medical evidence brought to exam by Veteran

If checked, describe: _____

Other: VERIS II; VBA Case Assignment Sheet; and Claimant Data Overview.

If checked, please provide a discussion including name of doctor/facility, type of record, date, diagnosis and any pertinent findings: On 6/16/2010, the Claimant was seen at LSL Psychiatry by

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Carlina Charles for nightmares and was diagnosed with Acute Reaction to Stress. He was seen there also on 6/15/2010.

On 6/16/2010, the Claimant was seen at LSI Neurology by Eileen Grass for headaches and was diagnosed with a history of concussion and was advised to take Tylenol. He was seen there also on 6/14/2010 by Mary Larchey who had a final impression of "mild TBI symptomatic".

He was seen at Carolina Psychological Health Services on 7/28/2010 by neuropsychologist, Dr. Karen Johnson, and after tests were administered, was diagnosed with Cognitive Disorder and Chronic, Moderate, PTSD, with a GAF of 40 to 45.

2 History

a. Relevant Social/Marital/Family history (pre-military, military, and post-military): The Claimant grew up in Wooster, Ohio. His parents divorced when he was four years old and he had a step-father who was active in his life. He had a "positive" relationship with both his father and step-father but now has minimal contact with them. He has little to no contact with his mother. He has one sibling with whom he had an "ok" relationship pre-military but now has little contact.

The Claimant has been married to his wife since 2006. They suddenly separated Friday and he described their relationship as "likely to split up". She is currently in Pennsylvania. They have a four year old son whom he loves.

b. Relevant Occupational and Educational history (pre-military, military, and post-military): The Claimant, Staff Sergeant William Bee, E-6, 30, is here today, January 23, 2013, at QTC MEDICAL SERVICES - CAMP LEJEUNE, JACKSONVILLE, NC, for an evaluation pertaining to Post Traumatic Stress Disorder and "Depression Condition", as requested by the Veterans Administration (VA). The Claimant has been serving (and is currently active) in the United States Marine Corps for nearly 13 years, from June 19, 2000 to this present time.

His EAS is April 1, 2013. His terminal leave is scheduled to begin on February 18, 2013. The Claimant served four tours of duty in Afghanistan during the following times: (1) from September, 2001 to April, 2002; (2) from October, 2002 to December, 2002; (3) from December, 2007 to September, 2008, and (3) from December, 2009 to June, 2010. He was deployed to Cuba from March, 2003 to May, 2003. His MOS is 0369, Infantry Unit Leader. He served in recruiting duty from 2004 to 2007. His original MOS was 0311.

The Claimant is a high school graduate. While in high school, he participated in band and wrestling.

c. Relevant Mental Health history, to include prescribed medications and family mental health (pre-military, military, and post-military): His mother was diagnosed with depression. He recalls that he was seen and treated at Camp Lejeune for a couple of months in 2010 and/or 2011, and in Germany for a couple of weeks following the IED blast and MedEvac. He had a 6 hour evaluation with neuropsychologist Dr. Johnson in which he was diagnosed with a Cognitive Disorder following the IED blast. He regularly sees Dr. Gaul, his primary care doctor, whom he finds very helpful.

He currently takes Melatonin 3 mg QHS, Zofran 4 mg, Venlafaxine 150 mg QD, Propanolol 10 mg QD for nightmares, Clonazepam 0.5 mg QD, Trazodone 100 mg QHS, and Amitriptyline 10 mg QHS.

d. Relevant Legal and Behavioral history (pre-military, military, and post-military): None known.

e. Relevant Substance abuse history (pre-military, military, and post-military): The Claimant currently drinks one to five beers per day.

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f. Sentinel Event(s) (other than stressors): _____

g. Other, if any: _____

3. Stressors

The stressful event can be due to combat, personal trauma, other life threatening situations (non-combat related stressors).

NOTE: For VA purposes, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

Describe one or more specific stressor event (s) the Veteran considers traumatic(may be pre-military, military, or post-military):

a. Stressor #1: The claimant relates the following traumatic event:

In February of 2010, the Claimant's good friend was shot in the head. The Claimant and others went to pull him to safety. They tried to get him Med Evac'd but he died in the Claimant's arms.

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

Yes No

Is the stressor related to the Veteran's fear of hostile military or terrorist activity?

Yes No

If no, explain: _____

b. Stressor #2: The claimant relates the following traumatic event:

In Afghanistan in 2010, another Marine who had just been shot nearly died as the Claimant held onto him. They got him onto a MedEvac helicopter, but he died in the helo.

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

Yes No

Is the stressor related to the Veteran's fear of hostile military or terrorist activity?

Yes No

If no, explain: _____

c. Stressor #3: The claimant relates the following traumatic event:

While in Marjah, he suffered a TBI on June 8, 2010, two days before his deployment was to end. He was under heavy fire while in a compound in which the enemy had planted 2 well-hidden IED's, which were apparently remotely detonated while his squad was inside. The entire surviving squad was in ICU at Camp Dwyer, but two from his squad were killed instantly by the IED blasts. He later learned that his two buddies' remains were first kept in a trash can, as it was the only option available at the time to those near enough to help.

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

Yes No

Is the stressor related to the Veteran's fear of hostile military or terrorist activity?

Yes No

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If no, explain: _____

d. Additional stressors: If additional stressors, describe (list using the above sequential format): Stressor #4:
The claimant relates the additional following traumatic event(s):
In May of 2010 while in Marjah, he was in a long firefight during which he almost ran out of ammunition. One of his men was hit.

Does this stressor meet Criterion A (i.e. is it adequate to support the diagnosis of PTSD?) X Yes No
Is the stressor related to the claimant's fear of hostile military or terrorist activity? X Yes No

Stressor #5:
The claimant relates the additional following traumatic event(s):
The first few times he had to kill.

Does this stressor meet Criterion A (i.e. is it adequate to support the diagnosis of PTSD?) X Yes No
Is the stressor related to the claimant's fear of hostile military or terrorist activity? X Yes No

4. PTSD Diagnostic Criteria

a. Please check criteria used for establishing the current PTSD diagnosis. The diagnostic criteria for PTSD, referred to as Criteria A-F, are from the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV).

Criterion A: The Veteran has been exposed to a traumatic event where both of the following were present:
 The Veteran experienced, witnessed or was confronted with an event that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others.
 The Veteran's response involved intense fear, helplessness or horror.
 No exposure to a traumatic event.

Criterion B: The traumatic event is persistently reexperienced in 1 or more of the following ways:
 Recurrent and distressing recollections of the event, including images, thoughts or perceptions
 Recurrent distressing dreams of the event
 Acting or feeling as if the traumatic event were recurring; this includes a sense of reliving the experience, illusions, hallucinations and dissociative flashback episodes, including those that occur on awakening or when intoxicated
 Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
 Physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
 The traumatic event is not persistently reexperienced

Criterion C: Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by 3 or more of the following:
 Efforts to avoid thoughts, feelings or conversations associated with the trauma
 Efforts to avoid activities, places or people that arouse recollections of the trauma
 Inability to recall an important aspect of the trauma
 Markedly diminished interest or participation in significant activities
 Feeling of detachment or estrangement from others

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Restricted range of affect (e.g., unable to have loving feelings)
 Sense of a foreshortened future (e.g., does not expect to have a career, marriage, children or a normal life span)
 No persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness

Criterion D: Persistent symptoms of increased arousal, not present before the trauma, as indicated by 2 or more of the following:
 Difficulty falling or staying asleep
 Irritability or outbursts of anger
 Difficulty concentrating
 Hypervigilance
 Exaggerated startle response
 No persistent symptoms of increased arousal

Criterion E:
 The duration of the symptoms described above in Criteria B, C and D is more than 1 month.
 The duration of the symptoms described above in Criteria B, C and D is less than 1 month.
 Veteran does not meet full criteria for PTSD

Criterion F:
 The PTSD symptoms described above cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
 The PTSD symptoms described above do NOT cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
 Veteran does not meet full criteria for PTSD

b. Which stressor(s) contributed to the Veterans PTSD diagnosis?:
 Stressor #1
 Stressor #2
 Stressor #3
 Other, please indicate stressor number (i.e. stressor #4, #5, etc.) as indicated above): Stressor #4; Stressor #5

5. Symptoms
For VA rating purposes, check all symptoms that apply to the Veterans diagnoses:
 Depressed mood
 Anxiety
 Suspiciousness
 Panic attacks that occur weekly or less often
 Panic attacks more than once a week
 Near-continuous panic or depression affecting the ability to function independently, appropriately and effectively
 Chronic sleep impairment
 Mild memory loss, such as forgetting names, directions or recent events
 Impairment of short- and long-term memory, for example, retention of only highly learned material, while forgetting to complete tasks
 Memory loss for names of close relatives, own occupation, or own name
 Flattened affect
 Circumstantial, circumlocutory or stereotyped speech
 Speech intermittently illogical, obscure, or irrelevant

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<input type="checkbox"/> Difficulty in understanding complex commands <input checked="" type="checkbox"/> Impaired judgment <input type="checkbox"/> Impaired abstract thinking <input type="checkbox"/> Gross impairment in thought processes or communication <input checked="" type="checkbox"/> Disturbances of motivation and mood <input checked="" type="checkbox"/> Difficulty in establishing and maintaining effective work and social relationships <input checked="" type="checkbox"/> Difficulty in adapting to stressful circumstances, including work or a worklike setting <input type="checkbox"/> Inability to establish and maintain effective relationships <input type="checkbox"/> Suicidal ideation <input type="checkbox"/> Obsessional rituals which interfere with routine activities <input checked="" type="checkbox"/> Impaired impulse control, such as unprovoked irritability with periods of violence <input checked="" type="checkbox"/> Spatial disorientation <input type="checkbox"/> Persistent delusions or hallucinations <input type="checkbox"/> Grossly inappropriate behavior <input type="checkbox"/> Persistent danger of hurting self or others <input type="checkbox"/> Neglect of personal appearance and hygiene <input type="checkbox"/> Intermittent inability to perform activities of daily living, including maintenance of minimal personal hygiene <input checked="" type="checkbox"/> Disorientation to time or place
<p>6. Other symptoms Does the Veteran have any other symptoms attributable to PTSD (and other mental disorders) that are not listed above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: <u>Difficulty staying motivated; daily moderate headaches; one to two migraines per month; dizziness; emotional numbness; noise sensitivity; chronic fatigue; difficulty concentrating; blurred or double vision; angry or irritable much of the time; ringing in ears; restlessness; and sensitivity to light.</u></p>
<p>7. Competency Is the Veteran capable of managing his or her financial affairs? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain: _____</p>
<p>8. Remarks, if any: <u>The veteran reports serving in the Marines. He indicates he served a total of 13 year(s). The period(s) of service were from: 6/19/2000 to Active. He was in service during Afghanistan War. He was in service during Iraq War. He reports that he participated in combat activity. The multiple Axis I diagnoses are related and the secondary diagnosis is not a progression of the primary diagnosis because the symptoms of each condition are separate and distinct from the others. Based upon the examination, the claimant needs to seek follow up treatment. The claimant will benefit from follow-up treatment, if that treatment is of very high quality and if it is of his choosing, including medication management and "talk therapy", and cognitive/memory enhancement services, in order to alleviate the many symptoms and various conditions which have developed while he has been in the service.</u> ***** DISCLAIMER: [Please note: Any statement made here regarding this, or any, Claimant, in response to a question such as</p>


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the one below, i.e., "Does the claimant appear to pose any threat of danger or injury to self or others?", must be understood as a statement regarding only this present moment, and regarding the presence or absence at the time of the evaluation, of any expressed or implied imminent danger to self or others. It must not be perceived as a predictive statement about any future behavior, since such a predictive statement cannot reliably be made with reference to the potential future behavior of anyone.] This information was conveyed to the claimant during the examination. The claimant does not appear to pose any threat of danger or injury to self or others.

Psychiatrist/Psychologist signature & title: _____ Date: 2/4/2013


DocuSigned by:
ROY K. VOGEL, Ph.D.
44A9EFD627C4A7...

Psychiatrist/Psychologist printed name: VOGEL, ROY K. Phone: 910-451-7580

NOTE: VA may request additional medical information, including additional examinations if necessary to complete VA's review of the Veteran's application.

QTC NOTE: The bolded statements in this DBQ form provide additional information pertinent to this evaluation.

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**

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Name of patient/Veteran: BEE, WILLIAM	SSN: xxx-xx-xxxx
<p>Your patient is applying to the U. S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the Veteran's claim.</p>	
<p>NOTE: Health care providers who may conduct traumatic brain injury (TBI) examinations include physiatrists, psychiatrists, neurosurgeons and neurologists, as well as generalist clinicians who have successfully completed the DEMO (CPEP) TBI training module. C&P TBI-certified clinicians are permitted to perform TBI residual disability examinations subject to existing VBA guidance on examiner qualification, including M21-1MR, III iv 3 D 18 b.</p> <p>However, the diagnosis of TBI must be made by a physiatrist, psychiatrist, neurosurgeon or neurologist. A consultation to one of those specialty groups may need to be obtained in conjunction with this examination if the diagnosis is not already of record.</p> <p>NOTE: In completing each Disability Benefits Questionnaire, clinicians should indicate the presence of only those findings, signs, symptoms, or residuals deemed attributable, in whole or in part, to the conditions in the Diagnosis Section. (For example, for a Stomach Questionnaire, indicate nausea is present only if the nausea is attributable to the stomach condition. If the Veteran has another cause for nausea, such as vertigo, do not indicate nausea. If needed, the clinician should provide additional clarification in the Remarks section.)</p>	
<p>SECTION I 1. Diagnosis</p> <p>Does the Veteran now have or has he/she ever had a traumatic brain injury (TBI) or any residuals of a TBI? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, select the Veteran's condition (check all that apply): <input checked="" type="checkbox"/> Traumatic brain injury (TBI) ICD code: 907.0 Date of diagnosis: 1/23/2013 <input checked="" type="checkbox"/> Other diagnosed residuals attributable to TBI, specify:</p> <p>Other diagnosis #1: Post Concussion Syndrome/Cognitive Impairment ICD code: 310.2 Date of diagnosis: 1/23/2013</p> <p>Other diagnosis #2: ICD code: Date of diagnosis:</p> <p>Other diagnosis #3: ICD code: Date of diagnosis:</p> <p>Other diagnosis #4: ICD code: Date of diagnosis:</p> <p>If there are additional diagnoses that pertain to the residuals of a TBI, list using above format:</p>	
<p>2. Medical history a. Describe the history (including onset and course) of the Veteran's TBI and residuals attributable to TBI (brief summary). SPECIFIC HISTORY FOR: TRAUMATIC BRAIN INJURY</p>	

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The condition began on 2001. The claimant reports:

While in Marjah in 2010, he was in an intense fight. He suffered a TBI on June 8, 2010, two days before his deployment ended. He was under heavy fire while in a compound in which the enemy had planted 2 IED's. It "blew out" both of his ear drums. His first memory after the blast was waking up in a CT scanner at Camp Dwyer in Afghanistan.

In 2008, he was fired upon by a sniper who hit the large rock in front of Claimant. Rock broke loose and hit the Claimant on the head. He lost consciousness for about five minutes. He refused to be Med Evac'd.

In 2001, he was Med Evac'd from Onslow Bay. His head hit a rock in the water when he was training as a Scout Swimmer. He lost consciousness and was taken to the Naval Hospital at Camp Lejeune. He has minimal memory of that day and experienced both an alteration of consciousness and post traumatic amnesia.

In Afghanistan, he was exposed on numerous occasions to mortar and rocket attack, small arms fire, and outgoing blast occurrences. The claimant reports being diagnosed with Cognitive Disorder and TBI. This was diagnosed 6/14/2010 by Mary Larchey and in July, 2010, by Dr. Karen Johnson. It was diagnosed at Landstuhl Regional Medicine in Germany and at Carolina Psychological Health Services. The current symptoms include, but are not limited to: difficulty staying motivated; daily moderate headaches; one to two migraines per month; dizziness; emotional numbness; noise sensitivity; chronic fatigue; difficulty concentrating; blurred or double vision; angry or irritable much of the time; hearing loss; ringing in ears; restlessness; and sensitivity to light.

b. Was the Veteran exposed to any blasts?

Yes No

If yes, indicate number of blasts:

1 2 3 More than 3

Date of first blast exposure: 2001

Date of last blast exposure: 2010

How many blasts were severe enough to knock Veteran down or cause injury?

0 1 2 3 More than 3

c. Does the Veteran's treatment plan include taking continuous medication for the diagnosed condition?

Yes No

If yes, list only those medications used for the diagnosed condition:

3. Evidence review

Was medical evidence available for review as part of this examination?

Yes No

If yes, indicate evidence reviewed as part of this examination (check all that apply):

VA claims file (C-file)

If checked, documents listed separately below that are included in a C-file ~~do not need to be~~ additionally indicated.

Veterans Health Administration medical records (VA treatment records)

Civilian medical records

Military service treatment records

Military service personnel records

Military enlistment examination

Military separation examination

Military post-deployment questionnaire

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- Department of Defense Form 214 separation document
- Previous disability decision letters
- Correspondence and non-medical documents related to condition
- Interviews with collateral witnesses (family and others who have known the Veteran before and after military service)
- Medical evidence brought to exam by Veteran
- If checked, describe:
- Other, describe: VERIS II; VBA Case Assignment Sheet; and Claimant Data Overview.

If checked, please provide a discussion including name of doctor/facility, type of record, date, diagnosis and any pertinent findings:

On 6/16/2010, the Claimant was seen at LSL Psychiatry by Carline Charles for nightmares and was diagnosed with Acute Reaction to Stress. He was seen there also on 6/15/2010.

On 6/16/2010, the Claimant was seen at LSL Neurology by Eileen Grass for headaches and was diagnosed with a history of concussion and was advised to take Tylenol. He was seen there also on 6/14/2010 by Mary Larchev who had a final impression of "mild TBI symptomatic".

He was seen at Carolina Psychological Health Services on 7/28/2010 by neuropsychologist, Dr. Karen Johnson, and after tests was administered, was diagnosed with Cognitive Disorder and Chronic, Moderate, PTSD, with a GAF of 40 to 45.

SECTION II. Assessment of cognitive impairment and other residuals of TBI

NOTE: For each of the following 10 facets of TBI-related cognitive impairment and subjective symptoms (facets 1-10 below), select the ONE answer that best represents the Veteran's current functional status.

Neuropsychological testing may need to be performed in order to be able to accurately complete this section. If neuropsychological testing has been performed and accurately reflects the Veteran's current functional status, repeat testing is not required.

1. Memory, attention, concentration, executive functions

- No complaints of impairment of memory, attention, concentration, or executive functions
- A complaint of mild memory loss (such as having difficulty following a conversation, recalling recent conversations, remembering names of new acquaintances, or finding words, or often misplacing items), attention, concentration, or executive functions, but without objective evidence on testing
- Objective evidence on testing of mild impairment of memory, attention, concentration, or executive functions resulting in mild functional impairment
- Objective evidence on testing of moderate impairment of memory, attention, concentration, or executive functions resulting in moderate functional impairment
- Objective evidence on testing of severe impairment of memory, attention, concentration, or executive functions resulting in severe functional impairment

If the Veteran has complaints of impairment of memory, attention, concentration or executive functions, describe (brief summary): Memory deficits are substantial and persistent. It is difficult to remember what he was told or what was said. Learning new material has become difficult. Planning and organizing is more laborious. Writing everything down is now essential, whereas this had not been so prior to the deployments. For the Claimant, there is difficulty maintaining attention or concentration on a task or on someone speaking for more than a moment's time. The Veteran experiences frequent frustration over repeatedly misplacing things.

2. Judgment

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Normal

Mildly impaired judgment. For complex or unfamiliar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision

Moderately impaired judgment. For complex or unfamiliar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, although has little difficulty with simple decisions

Moderately severely impaired judgment. For even routine and familiar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision

Severely impaired judgment. For even routine and familiar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision. For example, unable to determine appropriate clothing for current weather conditions or judge when to avoid dangerous situations or activities.

If the Veteran has impaired judgment, describe (brief summary): His judgment is generally intact. However, he has some difficulty weighing the pro's and con's of various decisions, including often not having the necessary level of frustration tolerance to deal with the tedious process of decision-making. He is less confident and more indecisive.

3. Social Interaction

Social interaction is routinely appropriate

Social interaction is occasionally inappropriate

Social interaction is frequently inappropriate

Social interaction is inappropriate most or all of the time

If the Veteran's social interaction is not routinely appropriate, describe (brief summary): While the Veteran's social behavior does not appear to be inappropriate in blatant ways, his social interactions have been broadly and substantially altered in negative ways. Essentially, he is socially avoidant when at all possible, unlike his pre-morbid norm.

4. Orientation

Always oriented to person, time, place, and situation

Occasionally disoriented to one of the four aspects (person, time, place, situation) of orientation

Occasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation

Often disoriented to two or more of the four aspects (person, time, place, situation) of orientation

Consistently disoriented to two or more of the four aspects (person, time, place, situation) of orientation

If the Veteran is not always oriented to person, time, place, and situation, describe (brief summary): He may lose track of brief moments of time and not recall the specifics of how he got to a particular place. There is a sense of "zoning out" and not knowing what happened to the time.

5. Motor activity (with intact motor and sensory system)

Motor activity normal

Motor activity is normal most of the time, but mildly slowed at times due to apraxia (inability to perform previously learned motor activities, despite normal motor function)

Motor activity is mildly decreased or with moderate slowing due to apraxia

Motor activity moderately decreased due to apraxia

Motor activity severely decreased due to apraxia

Claimant name: BEE, WILLIAM

Account #: 3037604.1.3

Date of Examination: 01/23/2013

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**

** Internal VA or DoD Use Only**

If the Veteran has any abnormal motor activity, describe (brief summary): Mechanical activities are more difficult than ever and can be exasperating for the Claimant. He recently tried to change the spark plugs in his car and after getting frustrated did \$600 worth of damage to his car.

6. Visual spatial orientation

- Normal
- Mildly impaired. Occasionally gets lost in unfamiliar surroundings, has difficulty reading maps or following directions. Is able to use assistive devices such as GPS (global positioning system)
- Moderately impaired. Usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions, and judging distance. Has difficulty using assistive devices such as GPS (global positioning system)
- Moderately severely impaired. Gets lost even in familiar surroundings, unable to use assistive devices such as GPS (global positioning system)
- Severely impaired. May be unable to touch or name own body parts when asked by the examiner, identify the relative position in space of two different objects, or find the way from one room to another in a familiar environment

If the Veteran has impaired visual spatial orientation, describe (brief summary): Used to be excellent at finding his way anywhere at any time, but now has difficulty at times. His wife does most of the driving when they are in the car together. He has gotten lost just going home.

7. Subjective symptoms

- No subjective symptoms
- Subjective symptoms that do not interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples are: mild or occasional headaches, mild anxiety
- Three or more subjective symptoms that mildly interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples of findings that might be seen at this level of impairment are: intermittent dizziness, daily mild to moderate headaches, tinnitus, frequent insomnia, hypersensitivity to sound, hypersensitivity to light
- Three or more subjective symptoms that moderately interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples of findings that might be seen at this level of impairment are: marked fatigability, blurred or double vision, headaches requiring rest periods during most days

If the Veteran has subjective symptoms, describe (brief summary): The Veteran now experiences symptoms such as: intermittent dizziness; daily moderate headaches; one to two migraines per month; tinnitus; chronic insomnia; hypersensitivity to sound; hypersensitivity to light; marked fatigability; and hearing loss.

8. Neurobehavioral effects

NOTE: Examples of neurobehavioral effects of TBI include: irritability, impulsivity, unpredictability, lack of motivation, verbal aggression, physical aggression, belligerence, apathy, lack of empathy, moodiness, lack of cooperation, inflexibility, and impaired awareness of disability. Any of these effects may range from slight to severe, although verbal and physical aggression are likely to have a more serious impact on workplace interaction and social interaction than some of the other effects.

- No neurobehavioral effects
- One or more neurobehavioral effects that do not interfere with workplace interaction or

Claimant name: BEE, WILLIAM Account #: 3037604.1.3 Date of Examination: 01/23/2013

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**
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social interaction.

One or more neurobehavioral effects that occasionally interfere with workplace interaction, social interaction, or both but do not preclude them

One or more neurobehavioral effects that frequently interfere with workplace interaction, social interaction, or both but do not preclude them

One or more neurobehavioral effects that interfere with or preclude workplace interaction, social interaction, or both on most days or that occasionally require supervision for safety of self or others

If the Veteran has any neurobehavioral effects, describe (brief summary): The Claimant experiences neurobehavioral effects such as: irritability; impulsivity; decreased motivation; verbal and physical aggression; feelings of apathy; and decreased empathy.

9. Communication

Able to communicate by spoken and written language (expressive communication) and to comprehend spoken and written language.

Comprehension or expression, or both, of either spoken language or written language is only occasionally impaired. Can communicate complex ideas.

Inability to communicate either by spoken language, written language, or both, more than occasionally but less than half of the time, or to comprehend spoken language, written language, or both, more than occasionally but less than half of the time. Can generally communicate complex ideas

Inability to communicate either by spoken language, written language, or both, at least half of the time but not all of the time, or to comprehend spoken language, written language, or both, at least half of the time but not all of the time. May rely on gestures or other alternative modes of communication. Able to communicate basic needs

Complete inability to communicate either by spoken language, written language, or both, or to comprehend spoken language, written language, or both. Unable to communicate basic needs

If the Veteran is not able to communicate by or comprehend spoken or written language, describe (brief summary): It can be difficult to communicate by, or easily comprehend, spoken and written language relative to his pre-morbid norm. He will have trouble putting his thoughts into words or finding the words he wants to use. He can retain what he reads if he is very interested in the topic, but has trouble learning new material.

10. Consciousness

Normal

Persistent altered state of consciousness, such as vegetative state, minimally responsive state, coma.

If checked, describe altered state of consciousness (brief summary):

SECTION III

1. Residuals

Does the Veteran have any subjective symptoms or any mental, physical or neurological conditions or residuals attributable to a TBI (such as migraine headaches or Meniere's disease)?

Yes No

If yes, check all that apply:

Motor dysfunction
If checked, ALSO complete specific Joint or Spine Questionnaire for the affected joint or spinal area.

Sensory dysfunction
If checked, ALSO complete appropriate Cranial or Peripheral Nerve Questionnaire.

Claimant name: BEE, WILLIAM Account #: 3037604 1.3 Date of Examination: 01/23/2013

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**

** Internal VA or DoD Use Only **

Hearing loss and/or tinnitus
If checked, ALSO complete a Hearing Loss and Tinnitus Questionnaire.

Visual impairment
If checked, ALSO complete an Eye Questionnaire.

Alteration of sense of smell or taste
If checked, ALSO complete a Loss of Sense of Smell and Taste Questionnaire.

Seizures
If checked, ALSO complete a Seizure Disorder Questionnaire.

Gait, coordination, and balance
If checked, ALSO complete appropriate Questionnaire for underlying cause of gait and balance disturbance, such as Ear Questionnaire.

Speech (including aphasia and dysarthria)
If checked, ALSO complete appropriate Questionnaire.

Neurogenic bladder
If checked, ALSO complete appropriate Genitourinary Questionnaire.

Neurogenic bowel
If checked, ALSO complete appropriate Intestines Questionnaire.

Cranial nerve dysfunction
If checked, ALSO complete a Cranial Nerves Questionnaire.

Skin disorders
If checked, ALSO complete a Skin and/or Scars Questionnaire.

Endocrine dysfunction
If checked, ALSO complete an Endocrine Conditions Questionnaire.

Erectile dysfunction
If checked, ALSO complete Male Reproductive Conditions Questionnaire.

Headaches, including Migraine headaches
If checked, ALSO complete a Headache Questionnaire.

Meniere's disease
If checked, ALSO complete an Ear Conditions Questionnaire.

Mental disorder (including emotional, behavioral, or cognitive)
If checked, ALSO complete Mental Disorders or PTSD Questionnaire.

Other, describe:
If checked, ALSO complete appropriate Questionnaire.

2. Other pertinent physical findings, scars, complications, conditions, signs and/or symptoms

a. Does the Veteran have any scars (surgical or otherwise) related to any conditions or to the treatment of any conditions listed in the Diagnosis section above?
 Yes No
If yes, are any of the scars painful and/or unstable, or is the total area of all related scars greater than 39 square cm (6 square inches)?
 Yes No
If yes, also complete a Scars Questionnaire.

b. Does the Veteran have any other pertinent physical findings, complications, conditions, signs and/or symptoms?
 Yes No
If yes, describe (brief summary):

3. Diagnostic testing

NOTE: If diagnostic test results are in the medical record and reflect the Veteran's current TBI residuals, repeat testing is not required.

a. Has neuropsychological testing been performed?
 Yes No

Claimant name: BEE, WILLIAM

Account #: 3037604.1.3

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**
** Internal VA or DoD Use Only **

If yes, provide date: July 28 and July 30, 2010
Results: The impression was that Claimant had Cognitive Disorder NOS

b. Have diagnostic imaging studies or other diagnostic procedures been performed?
 Yes No
 If yes, check all that apply:
 Magnetic resonance imaging (MRI)
 Date: _____ Results: _____
 Computed tomography (CT)
 Date: 2010 Results: Inconclusive regarding TBI.
 EEG
 Date: _____ Results: _____
 Other, describe: _____
 Date: _____ Results: _____

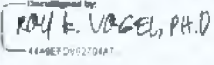
c. Has laboratory testing been performed?
 Yes No
 If yes, specify tests: _____ Date: _____ Results: _____

d. Are there any other significant diagnostic test findings and/or results?
 Yes No
 If yes, provide type of test or procedure, date and results (brief summary): **The Mohrre Cognitive Assessment (MoCA) test, which was administered today as part of this evaluation, is indicative of mild Traumatic Brain Injury (TBI), including indications of deficits in attention, language, abstraction, and delayed recall.**

4. Functional impact
 Do any of the Veteran's residual conditions attributable to a traumatic brain injury impact his or her ability to work?
 Yes No
 If yes, describe impact of each of the Veteran's residual conditions attributable to a traumatic brain injury, providing one or more examples: **The Veteran experiences difficulty staying on task, planning, organizing, remembering, processing and storing incoming data, and mastering new material. His irritability, anxiety, anger, and memory deficits reduce his level of daily functioning. Losing things, forgetting what he intended to do, and having difficulty remembering what was just said to him are further examples of what is persistently disruptive to his daily functioning.**

5. Remarks, if any: **The veteran reports serving in the Marines. He indicates he served a total of 13 year(s). The period(s) of service were from: 6/19/2000 to Active. He was in service during Afghanistan War. He was in service during Iraq War. He reports that he participated in combat actively. The diagnosis is already noted in the diagnosis section.**

Physician signature: _____ Date: 2/4/2013


Digitally signed by ROY K. VOGEL, PH.D.
 DN: cn=ROY K. VOGEL, o=VA, email=ROY.K.VOGEL@VA.GOV

Physician printed name: VOGEL, ROY K.
 Medical license #: 3414 Physician address: BLDG 501, N STREET,
 CAMP LEJEUNE, NC 28547
 Phone: 910-451-7580 Fax: 910-451-7584

Claimant name: BEE, WILLIAM Account #: 3037004113 Date of Examination: 01/23/2013

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**Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI)
Disability Benefits Questionnaire**
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NOTE: VA may request additional medical information, including additional examinations if necessary to complete VA's review of the Veteran's application.

QTC NOTE: The bolded statements in this DBQ form provide additional information pertinent to this evaluation.

Claimant name: BEE, WILLIAM

Account #: 3037604.1.3

Date of Examination: 01/23/2013

9

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

Patient: BEE, WILLIAM OLAS
Treatment Facility: NH Camp LeJeune

Date: 23 Jan 2009 0836 EST
Clinic: DEPLOYMENT HEALTH SERVICES

Appt Type: ROUT
Provider: PELLAND, RAYMOND J

Patient Status: Outpatient

Reason for Appointment: PDHRA
Appointment Comments:
Notes Entered by: DIXON, NIESHIA N 23 Jan 2009 0836

NND

AutoCites Refreshed by PELLAND, RAYMOND J @ 03 Feb 2009 1609 EST

Problems

- Patient Counseling:
- REFRACTIVE ERROR - MYOPIA

Active Family History

- No family history of diabetes mellitus
- No family history of glaucoma in both eyes

Allergies

- CYLERT (PEMOLINE): Unknown (mild rash)

Active Medications

No Active Medications Found.

SO Note Written by PELLAND, RAYMOND J @ 03 Feb 2009 1610 EST

Reason for Visit

Visit for: PDHRA Screening

A/P Written by PELLAND, RAYMOND J @ 03 Feb 2009 1610 EST

1. visit for: military services physical (POST DEPLOYMENT HEALTH REASSESSMENT (PDHRA): DOCUMENTED ON DD2900)

Disposition Written by PELLAND, RAYMOND J @ 03 Feb 2009 1610 EST

Released w/o Limitations

Follow up: as needed

Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding.

10 minutes face-to-face/floor time. >50% of appointment time spent counseling and/or coordinating care.

Note Written by PELLAND, RAYMOND J @ 03 Feb 2009 1609 EST

PDHRA Screen of 01/22/2009
DD FORM 2900, JAN 2008

Last Name, First Name, MI:

Bee, William, O

Today's Date

01/22/2009

SSN:

[REDACTED]

DOB:

[REDACTED]

Gender:

Male

Service Branch:

Marine Corps

Pay Grade:

E5

Date arrived theater (dd/mmm/yyyy)

12/Mar/2008

Date departed theater (dd/mmm/yyyy)

Name/SSN: BEE, WILLIAM OLAS/[REDACTED]

EMP/SSN: 20 [REDACTED]

DOB: [REDACTED]

PCat: MH USMC ACTIVE DUTY

MC Status: TRICARE PRIME (ACTIVE DUTY)

Insurance: No

Sex: M

Tel H: 814-241-4486

Tel W: 814-241-4486

CS:

Status:

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

Rank: STAFF SERGEANT

Unit: 31301K61

Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC

PCM:

Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE
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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICMR
FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
23 Jan 2009 0836	Facility: NH Camp LeJeune	Clinic: Deployment Health Services	Provider: PELLAND, RAYMOND J

11. Since return from your deployment, have you had serious conflicts with your spouse, family members, close friends, or at work that continue to cause you worry or concern?
No
12. Have you ever had any experience that was so frightening, horrible, or upsetting that, IN THE PAST MONTH, you.....?
a. Have had nightmares about it or thought about it when you did not want to?
Yes
b. Tried hard not to think about it or went out of your way to avoid situations that remind you of it?
No
c. Were constantly on guard, watchful, or easily startled?
No
d. Felt numb or detached from others, activities, or your surroundings?
No
- 13a. In the PAST MONTH, Did you use alcohol more than you meant to?
No
13b. In the PAST MONTH, have you felt that you wanted to or needed to cut down on your drinking?
No
13c. How often do you have a drink containing alcohol?
2 to 3 times a week
13d. How many drinks containing alcohol do you have on a typical day when you are drinking?
3 or 4
13e. How often do you have six or more drinks on one occasion?
Less than monthly
14. Over the PAST MONTH, have you been bothered by the following problems?
a. Little interest or pleasure in doing things
Not at all
b. Feeling down, depressed, or hopeless
Not at all
15. Would you like to schedule a visit with a healthcare provider to further discuss your health concern(s)?
No
16. Are you currently interested in receiving information or assistance for a stress, emotional or alcohol concern?
No
17. Are you currently interested in receiving assistance for a family or relationship concern?
No
18. Would you like to schedule a visit with a chaplain or a community support counselor?
No

Provider Review and Interview

1. Review symptoms and deployment concerns identified on form:
Confirmed screening results as reported.
2. Ask behavioral risk questions. Conduct risk assessment.
a. Over the PAST MONTH, have you been bothered by thoughts that you would be better off dead or of hurting yourself in some way?
No
IF YES, about how often have you been bothered by these thoughts?
b. Since return from your deployment, have you had thoughts or concerns that you might hurt or lose control with someone?
No
3. If member reports positive or unsure response to 2a. or 2b., conduct risk assessment.
a. Does member pose a current risk for harm to self or others?
b. Outcome of assessment
4. Alcohol screening result
Potential alcohol problem (positive response to either question 13a. or 13b. and/or AUDIT-C (questions 13c.-e.) score of 4 or more for men or 3 or more for women):
Refer to PCM for evaluation: No
5. Traumatic Brain Injury (TBI) risk assessment
Potential TBI with persistent symptoms, based on responses to question 9d.
Refer for additional evaluation: No
6. Record additional questions or concerns identified by patient during interview:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: MIF USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
M/C Status: TRICARE PRIME (ACTIVE DUTY)	CS: [REDACTED]	PCM:	
Insurance: No	Status: [REDACTED]	Tel. PCM:	

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE	
23 Jan 2009-0836	Facility: NH Camp LeJeune	Clinic: Deployment Health Services Provider: PELLAND, RAYMOND J

7. Identified Concerns
 Physical Symptom: Minor Concern, Already Under Care: No
 PTSD Symptom: Minor Concern, Already Under Care: No

8. Referral Information
 Other specialty case: No referral made

9. Comments:
 Declines MH services at this time.

11. Member was provided the following:
 Health Education and Information

12. Referral Made to the following healthcare or support system:
 None

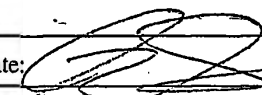

Certified
 Yes
 Provider's signature and stamp: ray pelland
 Date (mm/dd/yyyy): 01/22/2009

Signed By PELLAND, RAYMOND J (Physician/Workstation, NH Camp LeJeune) @ 03 Feb 2009 1610

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61
PCat: MH USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec: Rm: CAMP JOHNSON BRANCH CLINIC
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status:	PCM:
Insurance: No		Tel: PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE
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STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and ICMR
 FIRMR (41 CFR) 201-45.503

HEALTH RECORD		CHRONOLOGICAL RECORD OF MEDICAL CARE	
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)		
	1st Battalion 6th Marines / Battalion Aid Station		
	LIMDU Follow-up SF600		
P: 65	LIMDU Start Date: 21 JUN 2010	LIMDU End date: 20 DEC 2010	
R: 14	Period of LIMDU: (First) Second Third PEB		
TEMP: 97.6	Diagnosis: MILD TIB W/ LOC		
BP: 126/82			
SPO2:	Medications: SEROQUEL 25mg Tylenol 325mg, PHENERGAN 25mg		
	Appointments: NEUROPSYCH CLINIC 17 SEPT 10, SEPT 22, 2010		
	Patients Current Condition and Health Concerns: GOOD GETTING BETTER		
	NFE		
	Case Manager:		
	Corpsman Signature and Date:  LT Justin Weppner, MC, USN		
	Healthcare Provider Signature and Date:  LT Justin Weppner, MC, USN		

PATIENT'S IDENTIFICATION (Use this space for Mechanical Imprint)

RECORDS MAINTAINED AT:	1st Battalion 6th Marines / Battalion Aid Station		
PATIENT'S NAME (Last, First, Middle initial)	BEE WILLIAM		SEX M
RELATIONSHIP TO SPONSOR:	STATUS AD	RANK/GRADE E-5 SGT	
SPONSOR'S NAME		ORGANIZATION 1/6	
DEPART./SERVICE	SSN/IDENTIFICATION NO. 20/ [REDACTED]	DATE OF BIRTH [REDACTED]	

CHRONOLOGICAL RECORD OF MEDICAL CARE STANDARD FORM 600 (EF)

BEST COPY

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Appx4083

JSMC FITNESS REPORT (1510) FITREP ID #1023427 (T A-PBS 5.3.1.1)								DO NOT STAPLE THIS FORM	
NAVMC 10835A (Rev. 4-03)									
PREVIOUS EDITIONS WILL NOT BE USED								COMMANDANT'S GUIDANCE	
FOUD - Privacy sensitive if filled in									
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, commands, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name		b. First Name		c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	HT/BILMOS
BEE		WILLIAM		O	XXXXXX	SSGT	20101001	0369	0369
2. Organization:									
a. MCC		b. RUC		c. Unit Description					
K61		31301		FLD MED TRNG BN EAST (PERM PERS)					
3. Occasion and Period Covered:									
a. OCC		b. From		To		c. Type			
EN		20130101		20130401		N			
4. Duty Assignment (descriptive title)									
MILITARY INSTRUCTOR									
5. Special Case:									
a. Adverse		b. Not Observed		c. Extended					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
6. Marine Subject Of:									
a. Commendatory Material		b. Derogatory Material		c. Disciplinary Action					
<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
7. Recommended For Promotion:									
a. Yes		b. No		c. N/A					
<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
B. Special Information:									
a. DUAL		d. HT(in.)		g. Reserve Component		9. Duty Preference:			
ES		68				a. Code b. Descriptive Title			
b. PFT		e. WT		h. Status		1st Y00 NO PREFERENCE / AS DIRECTED			
NREQ		172				2nd Y00 NO PREFERENCE / AS DIRECTED			
c. CFT		f. Body Fat		i. Future Use		3rd Y00 NO PREFERENCE / AS DIRECTED			
NREQ									
10. Reporting Senior:									
a. Last Name		b. Inltc. Service		d. SSN	e. Grade	1. Duty Assignment			
ALAZIZ		S USN		XXXXXX	LCDR	COMPANY COMMANDER			
11. Reviewing Officer:									
a. Last Name		b. Inltc. Service		d. SSN	e. Grade	1. Duty Assignment			
CLONTZ		DT USN		XXXXXX	CAPT	COMMANDING OFFICER			
B. BILLET DESCRIPTION									
<p>-To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary, to serve with and support the Marine Corps.</p> <p>-Instructs, develops and evaluates Navy Petty Officers in combat leadership</p> <p>-Coordinates and execute a progressive physical fitness program for Navy students.</p> <p>-Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform and accountability of gear and personnel.</p> <p>Establishes and updates lesson plans and supporting material.</p> <p>-Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as developing their marksmanship.</p> <p>-Responsible for instructing and supervising close order drill.</p> <p>-Active member of students' Performance, Academic and Disciplinary Review Boards.</p> <p>-Responsible for accountability, good order and discipline, and morale of personnel.</p>									
C. BILLET ACCOMPLISHMENTS									
<p>-Personally led, mentored and trained over 74 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training.</p> <p>-As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations.</p> <p>-Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance.</p> <p>-Flawlessly maintained accountability of personnel, weapons, and equipment.</p>									

1. Marine Reported On: a. Last Name				b. First Name		c. MI	d. SSN	2. Occasion and Period Covered: a. OCC			b. From	To
BEE				WILLIAM		O	XXXXX	EN			20130101	20130401
D. MISSION ACCOMPLISHMENT												
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.												
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results merited in status quo.	Consistently produce quality results while measurably improving unit performance. Habitually makes effective use of time and resources to improve billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert within and beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.									N/D
A	B	C	D	E	F	G	H	30161				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Commands respect in position and experience. Translates skills into actions which contribute to accomplishing tasks and missions, imparts knowledge to others.												
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment, innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of most. Unmatched expertise; broad-based education; superior technical or forward thinking. Initiates actions that have an immeasurable impact on mission success. Fearless teacher; readily imparts knowledge to subordinates, peers, and seniors.									N/D
A	B	C	D	E	F	G	H					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
JUSTIFICATION:												
<p>... execution of the Marine's overall duties, commands respect in position and experience. Translates skills into actions which contribute to accomplishing tasks and missions, imparts knowledge to others.</p> <p>... True expert in field. Knowledge and skills impact far beyond those of most. Unmatched expertise; broad-based education; superior technical or forward thinking. Initiates actions that have an immeasurable impact on mission success. Fearless teacher; readily imparts knowledge to subordinates, peers, and seniors.</p>												
E. INDIVIDUAL CHARACTER												
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Consistent, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.												
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.									N/D
A	B	C	D	E	F	G	H					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
2. EFFECTIVENESS UNDER STRESS. Thinking, acting, and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying a clear purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are integral.												
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates superior mental acuity and willpower. Stabilizes others through the application of logical, problem-solving skills, and leadership. Inspires confidence in others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and finely application of direction, focus and personal presence.									N/D
A	B	C	D	E	F	G	H					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
3. INITIATIVE. Action in the absence of specific direction, seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically to completion. Being creative, proactive and decisive. Transforming opportunity into action.												
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade and training and experience.	Keen foresight and energy consistently transform opportunity into action. Devices and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulates original, far-reaching solutions. Always takes decisive, effective action.									N/D
A	B	C	D	E	F	G	H					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
JUSTIFICATION:												
<p>3. INITIATIVE. A follow through at</p> <p>ADV: Demonstrates take action</p>												

1. Marine Reported On: a. Last Name				b. First Name				c. MI		d. SSN		2. Occasion and Period Covered: a. OCC				b. From		To	
BEE				WILLIAM				O		XXXX		EN				20130101		20130401	
F. LEADERSHIP																			
1. LEADING SUBORDINATES: The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinate performance.																			
ADV		Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.				Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.				Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Encourages initiative from subordinates, loyalty, and high moral standards. Subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and accomplishment even in adverse circumstances.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
2. DEVELOPING SUBORDINATES: Commitment to train, educate, and challenge all Marines regardless of race, ethnicity, religion, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and applying training to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.																			
ADV		Maintaining an environment that allows personal and professional development. Encourages subordinates participate in all mandated development programs.				Develops and institutes innovative programs, to include PERE, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.				Widely recognized and emulated as a superior coach and leader. All Marines desire to serve with this Marine because they will grow personally and professionally. Subordinates and unit performance far exceeded expected results due to this Marine's leadership and team building efforts. Subordinate development is infectious, extending beyond the unit.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
3. SETTING THE EXAMPLE: The most visible facet of leadership: how well a Marine serves as a role model for others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Basic standards of self-discipline are elements.																			
ADV		Maintaining Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps core values.				Personal conduct on and off duty reflects the highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement and responsibility.				Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are tone-setting. Inspires and motivates subordinates, peers, and seniors. Inspires subordinates to improve self and unit.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
4. ENSURING WELL-BEING OF SUBORDINATES: Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate focus on unit mission accomplishment. Genuine personal presence. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.																			
ADV		Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinate well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.				Instills and/or reinforces a sense of responsibility among junior Marines to take care of themselves and their subordinates. Fosters the development of and support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Encourages subordinates to improve their ability to accomplish their mission.				Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby correcting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Purs motto <i>Mission First, Marines always</i> , into action.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
5. COMMUNICATION SKILLS: The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to guide as well as counsel.																			
ADV		Skilled in receiving and conveying information. Communicates clearly in the performance of duties.				Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.				Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
JUSTIFICATION: (1) Comm- -r																			

1. Marine Reported On:				2. Occasion and Period Covered:											
a. Last Name		b. First Name		c. MI		d. SSN									
BEE		WILLIAM		O		XXXXXX									
a. OCC		b. From		c. To											
EN		20130101		20130401											
G. INTELLECT AND WISDOM															
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increase the breadth and depth of writing and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.															
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts, widely recognized as an intellectual leader in professionally related topics. Makes time for study and research. Advantage of all resources and programs. Introduces new and creative approaches to service issues. Engage in a broad spectrum of forums and dialogues.					N/O							
A	<input type="checkbox"/>	B	<input type="checkbox"/>	C	<input type="checkbox"/>	D	<input checked="" type="checkbox"/>	E	<input type="checkbox"/>	F	<input type="checkbox"/>	G	<input type="checkbox"/>	H	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decision-making. Decisions are made within the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and logical reasoning.															
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast, willing to make difficult decisions.	Widely recognized and sought after to solve the most critical, complex problems. Soundly matches analytical and intuitive abilities. Accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.					N/O							
A	<input type="checkbox"/>	B	<input type="checkbox"/>	C	<input type="checkbox"/>	D	<input type="checkbox"/>	E	<input type="checkbox"/>	F	<input type="checkbox"/>	G	<input type="checkbox"/>	H	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, experience, and personal expertise to make wise choices. Comprehends the consequences of contemplated courses of action.															
ADV	Majority of judgments are measured, circumstances, relevant and correct.	Decisions are consistent and uniformly correct, tempered by consideration of consequences. Able to identify and assess relevant factors in the decision-making process. Opinions thoughtful, others. Subordinates personal interests in favor of impartiality.	Insights reflect exceptional insight and wisdom beyond this Marine's experience. Counsel sought by all. Serves as an arbiter. Consistent, superior judgment inspires the confidence of subordinates.					N/O							
A	<input type="checkbox"/>	B	<input type="checkbox"/>	C	<input type="checkbox"/>	D	<input checked="" type="checkbox"/>	E	<input type="checkbox"/>	F	<input type="checkbox"/>	G	<input type="checkbox"/>	H	<input type="checkbox"/>
JUSTIFICATION:															
<p>decision making. Draws on core values, experience, and personal expertise to make wise choices. Comprehends the consequences of contemplated courses of action.</p> <p>Decisions are consistent and uniformly correct, tempered by consideration of consequences. Able to identify and assess relevant factors in the decision-making process. Opinions thoughtful, others. Subordinates personal interests in favor of impartiality.</p>															
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES															
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.															
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RO, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by RO or HQMC for inflated markings.	Prepared inflated evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section C's were void of substantive. Justifications were specific, measurable, substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.					N/O							
A	<input type="checkbox"/>	B	<input type="checkbox"/>	C	<input type="checkbox"/>	D	<input type="checkbox"/>	E	<input type="checkbox"/>	F	<input type="checkbox"/>	G	<input type="checkbox"/>	H	<input checked="" type="checkbox"/>
JUSTIFICATION:															
<p>reports that were returned by RO or HQMC for inflated markings.</p> <p>Prepared inflated evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section C's were void of substantive. Justifications were specific, measurable, substantive, and where possible, quantifiable and supported the markings given.</p>															
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive FITREP ID #1623427 PAGE 4 OF 5															

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXXX	EN	20130101	20130401
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>SSgt Bee is an outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailors and Marines at Field Medical Training Battalion-East. MRO has been a vital asset to this command and has gained my utmost trust and confidence. SSgt Bee's experience and expertise allowed him to perform the very demanding duty of Marine Military Instructor and his actions have had a direct and positive impact on the Battalion's mission to train our Navy Corpsmen and Post-Program Specialists to serve and support the Marine Corps.</p> <p>Directed Comment. Sect A, Item 3a: MRO has a release from active duty with honorable discharge date of 01 April 2013 and executes terminal leave on 18 [REDACTED] 2013.</p> <p>Directed Comment. Sect A, Item 6a: MRO received the Navy and Marine Corps Achievement Medal during this reporting period for sustained superior performance. [REDACTED] at F. ld Medical [REDACTED] and ar. has gair [REDACTED]</p>						
J. CERTIFICATION						
<p>1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.</p>				<p>Electronic Signature of Reporting Senior: SAAD ALAZIZ (Date in YYYYMMDD format) 20130228</p>		
<p>2. I ACKNOWLEDGE the adverse nature of this report and</p> <p><input type="checkbox"/> I have no statement to make.</p> <p><input type="checkbox"/> I have attached a statement</p>				<p>(Date in YYYYMMDD format)</p>		
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient		2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur				
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.		DESCRIPTION		COMPARATIVE ASSESSMENT		
		THE EMINENTLY QUALIFIED MARINE		0		
		ONE OF THE FEW		0		
		EXCEPTIONALLY QUALIFIED MARINES		3		
		ONE OF THE MANY		9		
		PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE		9		
		NEXT A QUALIFIED MARINE		0		
		UNSATISFACTORY		1		
				0		
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command assignment, retention, retention PME, and retention; and put Reporting Senior marks and comments in perspective.						
<p>Concur with RS remarks. Truly noteworthy SNCO who displays decisive leadership, good judgment and professional expertise. MRO has consistently demonstrated a total dedication to duty and a commitment to excellence in the morale and welfare of those under his charge. A true asset to the Marine Corps. his leadership is sought after by many. Takes great pride in being a Marine and provides sound leadership and guidance to all. Although MRO is leaving active duty, if he ever returns and I was given the opportunity, I would actively seek him out to serve with anywhere at any time.</p>						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronic Signature of Reviewing Officer: DAVID T CLONIZ		
				(Date in YYYYMMDD format) 20130402		
6. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make.						
<input type="checkbox"/> I have attached a statement				(Date in YYYYMMDD format)		
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						
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USMC FITNESS REPORT (1610) FITREP ID #1602431 (T A-PES 5.3.1.1)							DO NOT STAPLE THIS FORM	
NAVMC 10835A (Rev. 4-03)								
PREVIOUS EDITIONS WILL NOT BE USED								
FOUO - Privacy sensitive if filled in								
COMMANDANT'S GUIDANCE								
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflatory markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>								
A. ADMINISTRATIVE INFORMATION								
1. Marine Reported On:								
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMDS	h. BILMOS	
BEE	WILLIAM	O	XXXXX	SSGT	20101001	0369	0369	
2. Organization:								
a. MCC	b. RUC	c. Unit Description						
K61	31301	FLD MED TRNG BN EAST (PERM PERS)						
3. Occasion and Period Covered:				4. Duty Assignment (descriptive title)				
a. OCC	b. From	To	c. Type					
AN	20120101	20121231	N	MILITARY INSTRUCTOR				
6. Special Case:			6. Marine Subject Of:			7. Recommended For Promotion:		
a. Adverse	b. Not Observed	c. Extended	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	1. Yes	b. No	c. N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Special Information:				9. Duty Preference:				
a. DUAL	ES	d. HT(In.)	67	b. Reserve Component				
b. PFT	A 219	e. WT	170	h. Status				
c. CFT	A286	f. Body Fat		i. Future Use				
				1st PREFERENCE / AS DIRECTED 2nd PREFERENCE / AS DIRECTED 3rd PREFERENCE / AS DIRECTED				
10. Reporting Senior:								
a. Last Name	b. Inlt. Service	c. Component	d. SSN	e. Grade	f. Duty Assignment			
ALAZIZ	S	USN	XXXXX	LCDR	COMPANY COMMANDER			
11. Reviewing Officer:								
a. Last Name	b. Inlt. Service	c. Component	d. SSN	e. Grade	f. Duty Assignment			
CLONTZ	DT	USN	XXXXX	CAPT	COMMANDING OFFICER			
B. BILLET DESCRIPTION								
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. - Instructs, develops and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as development of marksmanship. - Responsible for instructing and supervising close order drill. - Active member of student performance, Academic and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 								
C. BILLET ACCOMPLISHMENTS								
<ul style="list-style-type: none"> - Assisted in the development and refinement of the battalion's culminating field exercise resulting in more realistic and current tactics, techniques and procedures used in the Fleet Marine Force. - Personally led, mentored and trained over 268 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training. - As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations. - Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance throughout the calendar year. - flawlessly maintained accountability of personnel, weapons, and equipment. 								

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXXX	AN	20120101 20121231
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicates an aptitude for time and resource management, task prioritization, and tendency to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources; improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Enthusiastic; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce meaningful results in quality and efficiency.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines technical education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impart far beyond those of peers. Broad-based education, experience, and forward thinking, imparts significant and measurable impact on mission accomplishment. Fearless teacher; selflessly imparts knowledge to subordinates, peers, and seniors.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
<p>Execution of the Marine's overall duties and missions. Imparts knowledge to others.</p> <p>True expert in field. Knowledge and skills impart far beyond those of peers. Broad-based education, experience, and forward thinking, imparts significant and measurable impact on mission accomplishment. Fearless teacher; selflessly imparts knowledge to subordinates, peers, and seniors.</p>							
E. INDIVIDUAL CHARACTER							
1. COURAGE Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and stability under pressure. Judgment and effective problem-solving skills are evident.	Guided by conscience in all actions. Proves ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS Thinking, feeling, and acting effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying a clear purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are essential.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates composure, mental agility and willpower in the face of adversity. Provides leadership through the application of logical problem-solving skills, and leads by example.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically to completion. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Line of sight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
<p>3. INITIATIVE. A line of sight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.</p> <p>ADV Demonstrates discipline and stability under pressure. Judgment and effective problem-solving skills are evident.</p>							

1. Marine Reported On: a. Last Name				2. Occasion and Period Covered: a. OCC				b. From		To																	
BEE				WILLIAM		O		XXXXX		AN 20120101 20121231																	
F. LEADERSHIP																											
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinate performance.																											
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieve a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Buies and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and accomplishment even in adverse circumstances.									N/O															
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2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnicity, gender, or age. Cultivating professional and personal development of subordinates. Developing team players and approaches to tasks. Combining teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.																											
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinates and unit performance far exceed expectations due to the high standards and team building which create lasting subordinate developments infectious, extending beyond the unit.									N/O															
<table border="0"> <tr> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td><td>H</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> </tr> </table>												A	B	C	D	E	F	G	H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing and self-discipline are elements.																											
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps core values.	Personal conduct on and off duty reflects the highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide range of areas. Dedication to duty and professional example encourage others' self-responsibility and accountability.	Model Marine, frequently emulated. Exemplary bearing, conduct, behavior, and actions are tone-setting. Inspires and motivates subordinates, peers, and seniors. Demonstrates a stable dedication to improving self and others.									N/O															
<table border="0"> <tr> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td><td>H</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> </tr> </table>												A	B	C	D	E	F	G	H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate focus on unit mission accomplishment. Concern for subordinate's development. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.																											
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Initiates and/or reinforces on- and off-duty responsibilities among junior Marines and themselves and their subordinates. Actively fosters the development of and supports systems for subordinates which improve their ability to contribute to their mission accomplishment. Efforts to enhance subordinates welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby correcting potential problems before they can hinder subordinates effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. <i>Put me first. Mission first. Marines always.</i> Into action.									N/O															
<table border="0"> <tr> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td><td>H</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> </tr> </table>												A	B	C	D	E	F	G	H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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5. COMMUNICATION SKILLS. The efficient transmission and/or exchange of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical thinking skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to function as well as counsel.																											
ADV	Skilled in conveying and conveying information. Communicates effectively in all performance situations.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adapt in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.									N/O															
<table border="0"> <tr> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td><td>H</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> </tr> </table>												A	B	C	D	E	F	G	H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A	B	C	D	E	F	G	H																				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																				
JUSTIFICATION: COMMUNICAT... Listening, speakin... complex ideas in... Contributes to... I Comm... rior																											

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name		c. MI		d. SSN		
BEE		WILLIAM		O		XXXXX		
OCC		b. From		To				
AN		20120101		20121231				
G. INTELLECT AND WISDOM								
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.								
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts, widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. From introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. DECISION MAKING ABILITY. Viable and timely problem solution. Contributing elements are judgment and decision-making. Decisions are made within the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and successful utilization of all resources.								
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Bleedfast, willing to make difficult decisions.	Widely recognized and sought after to solve the most critical, complex problems. Solidly matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.				N/O	
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.								
ADV	Majority of judgments are measured, circumspect, relevant and correct.	Decisions are consistent and uniformly correct; tempered by consideration of consequences. Able to identify and assess relevant factors in the decision-making process. Opinions sought by others. Subordinates personal interests in favor of impartiality.	Insights and judgments reflect exceptional insight and wisdom beyond this Marine's experience. Counsel sought by others as an arbiter. Consistent, superior judgment inspires the confidence of seniors.				N/O	
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
JUSTIFICATION:								
<p>decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.</p> <p>Decisions are consistent and uniformly correct; tempered by consideration of consequences. Able to identify and assess relevant factors in the decision-making process. Opinions sought by others. Subordinates personal interests in favor of impartiality.</p>								
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES								
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.								
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RO, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for administrative correction.	Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. As RO, if any reports were returned by RO or HQMC for administrative correction, Section C's were void of inflated markings. Justifications were specific, substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO, nonconcurred with all inflated reports.				N/O	
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
JUSTIFICATION:								
<p>Occasionally submitted untimely or administratively incorrect evaluations. As RO, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for administrative correction.</p>								

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXXX	AN	20120101	20121231
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>SSgt Bee is an outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailors and Marines at FMTB-East. His performance has had force-wide impact and significantly enhanced the quality, character, capabilities, and attitude of thousands of Hospital Corpsmen, Religious Program Specialists, Chaplains, and Navy Medical Department Officers now serving with the Marine Corps operating forces world-wide. A phenomenal instructor whose students all have performed at the highest level. SSgt Bee is our lead suicide prevention instructor who provides annual training to our staff as well as a suicide prevention training brief to every FMST/CREST class. His excellence in leading Sailors is noted by the number of accolades he receives from both enlisted and officer students. SSgt Bee is without a doubt ready to perform at the next level and has earned my recommendation for promotion to Gysgt.</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronic Signature of Reporting Senior: SAAD ALAZIZ (Signature of Reporting Senior)		Date: 20130130 (Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make. <input type="checkbox"/> I have attached a statement		Date: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> (Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient		2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur		SAAD ALAZIZ		
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.		DESCRIPTION THE EMINENTLY QUALIFIED MARINE ONE OF THE FEW EXCEPTIONALLY QUALIFIED MARINES ONE OF THE MOST PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE A QUALIFIED MARINE UNSATISFACTORY		COMPARATIVE ASSESSMENT 0 0 3 6 9 0 1 0		
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command assignment, retention, PME, and retention; and put Reporting Senior marks and comments in perspective.						
Concur with RS remarks. SSgt Bee performed his duties in a highly exemplary manner for this reporting period and is a true asset to this command. His performance definitely improved the efficiency of our training programs and directly contributed to our success. MRO continuously focuses on subordinate development, providing positive direction and a climate where his personnel can succeed as well as ensuring that our Corpsmen are ready for the challenges associated with serving with the FMF. Stands ready today to be promoted, retain, promote ahead of contemporaries.						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronic Signature of Reviewing Officer: DAVID T CLONIZ (Signature of Reviewing Officer)		Date: 20130131 (Date in YYYYMMDD format)
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make. <input type="checkbox"/> I have attached a statement.		Date: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> (Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						
NAVMC 10835A (Rev. 4-03) (T.A.PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive FITREP ID #1602431 PAGE 3 OF 5						

USMC FITNESS REPORT (1510) FITREP ID #1366712 (T A-PES 5.3.1.1)						DO NOT STAPLE THIS FORM	
NAVMC 10635A (Rev. 4-03)							
PREVIOUS EDITIONS WILL NOT BE USED						COMMANDANT'S GUIDANCE	
FOUO - Privacy sensitive if filled in							
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, assignment, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>							
A. ADMINISTRATIVE INFORMATION							
1. Marine Reported On:							
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS
BEE	WILLIAM	O	XXXXX	SSGT	20101001	0369	3529
2. Organization:							
a. MCC	b. RUC	c. Unit Description					
K61	31301	FLD MED TRNG BN EAST (PERM PERS)					
3. Occasion and Period Covered:							
a. OCC	b. From	To	c. Type	4. Duty Assignment (descriptive title)			
AN	20110101	20111231	N	MILITARY ADVISOR/MILITARY SUBJECT INSTRUCTOR			
6. Special Case:							
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:			7. Recommended For Promotion:	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Special Information:							
a. QUAL	ES	d. HT(in.)	68	b. Reserve Component	9. Duty Preference:		
b. PFT	A215	e. WT	170	h. Status	a. Code	b. Descriptive Title	
c. CFT	A298	f. Body Fat		i. Future Use	1st	FMF EAST COAST	
					2nd	Y08 POST OR STATION EAST COAST	
					3rd	VII SECURITY FORCES - ATLANTIC	
10. Reporting Senior:							
a. Last Name	b. Inlt. Service	c. SSN	d. DOR	e. Grade	f. Duty Assignment		
ALAZIZ	S	USN	XXXXX	LT	COMPANY COMMANDER		
11. Reviewing Officer:							
a. Last Name	b. Inlt. Service	c. SSN	d. DOR	e. Grade	f. Duty Assignment		
ARELLANO	RE	USN	XXXXX	CAPT	COMMANDING OFFICER		
B. BILLET DESCRIPTION							
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps. - Instructs, develops, and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuing presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 carbine as well as development of the marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Students Performance, Academic, and Disciplinary Review Boards. - Responsible for maintaining good order and discipline, and morale of personnel. 							
C. BILLET ACCOMPLISHMENTS							
<ul style="list-style-type: none"> - Developed field exercise resulting in better trained Navy Personnel that more accurately represents current tactics techniques and procedures currently being experienced in current operational theatres. - Trained 1000 students in offensive/defensive attacks, ambushes and land navigation field exercise and hikes. - SNMs platoons received 3 "Top Dog" awards, 3 "Honor Graduates", 1 "Super Squad" and 1 "Super Doc" award over a period of 5 classes. - Completed Formal School Instructor Course - Personally led mentored and trained 314 Sailors during this reporting period for duty in the Marine Operating Forces. - Led platoon on 20 conditioning hikes totaling 100 miles. - Maintained flawless accountability of personnel, weapons, and equipment for his platoons. 							

1. Marine Reported On: a. Last Name				b. First Name				c. MI		d. SSN		2. Occasion and Period Covered: a. OCC			b. From		To	
BEE				WILLIAM				O		XXXXX		AN			20110101		20111231	
D. MISSION ACCOMPLISHMENT																		
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.																		
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.			Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources; improves billet procedures and products. Positive impact extends beyond billet expectations.			Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Enthusiast sought after as an expert in his/her area beyond unit. Respects significant, innovative approaches to problems produced in quality and efficiency.						N/A					
A	B	C	D	E	F	G	H											
				X														
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines technical knowledge and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others.																		
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.			Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.			True expert in field. Knowledge and skills impact far beyond those of peers. Unparalleled broad-based education, experience, and forward thinking. Invaluable impact on the unit. Peerless teacher. Selflessly imparts knowledge to subordinates, peers, and seniors.						N/A					
A	B	C	D	E	F	G	H											
			X		X													
JUSTIFICATION:																		
<p>Execution of the Marine's overall duties and missions. Imparts knowledge to others. True expert in field. Knowledge and skills impact far beyond those of peers. Unparalleled broad-based education, experience, and forward thinking. Invaluable impact on the unit. Peerless teacher. Selflessly imparts knowledge to subordinates, peers, and seniors.</p>																		
E. INDIVIDUAL CHARACTER																		
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.																		
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.			Guided by conscience in all actions. Proves ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.			Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.						N/A					
A	B	C	D	E	F	G	H											
2. EFFECTIVENESS UNDER STRESS. Thinking, acting, and decision-making under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying a clear purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.																		
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.			Consistently demonstrates superior mental equilibrium and willpower. Exhibits a sense of calm and composure through the application of logical problem-solving skills, and leadership to reassure subordinates.			Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and finely application of direction, focus and personal presence.						N/A					
A	B	C	D	E	F	G	H											
			X															
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically and to the end. Being creative, proactive and decisive. Transforming opportunity into action.																		
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade and training and experience.			Forethought and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.			Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.						N/A					
A	B	C	D	E	F	G	H											
			X															
JUSTIFICATION:																		
<p>3. INITIATIVE. A follow through at ADV Demonstrates</p>																		

1. Marine Reported On: a. Last Name				b. First Name				c. MI		d. SSN		2. Decision and Period Covered: a. OCC				b. From		To	
BEE				WILLIAM				O		XXXX		AN				20110101		20111231	
F. LEADERSHIP																			
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinate performance.																			
ADV		Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.				Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through observative supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.				Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders strong subordinate loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and accomplishment even in difficult circumstances.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and supporting positive discipline teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.																			
ADV		Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.				Develops and institutes innovative programs, to include PIRE, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.				Widely recognized and emulated as a leader, coach and leader. Many Marines desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far exceeds expected results due to PIRE mentorship and team building efforts. Subordinate development is infectious, extending beyond the unit.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Goodness, character, and self-discipline are elements.																			
ADV		Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps core values.				Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide range of areas. Dedication to duty and professional excellence encourage others' self-improvement and excellence.				Model Marine, frequently emulated. Conduct, behavior, and actions are long-lasting inspiration to subordinates, peers, and seniors. Exemplary dedication to improving self and others.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate for a unit mission accomplishment. Concern for subordinate development. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.																			
ADV		Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinate well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.				Instills and/or reinforces a sense of responsibility among junior Marines and fosters the development of support systems for subordinates which improve their ability to contribute to their mission accomplishment. Encourages subordinate welfare improve their ability to accomplish their mission.				Noticeably enhances subordinate well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby correcting potential problems before they can hinder subordinate effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto <i>Mission First, Marines Always</i> , into action.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and reading. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to provide as well as counsel.																			
ADV		Skilled in receiving and conveying information. Communicates effectively in the performance of duties.				Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.				Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.				N/O					
A		B		C		D		E		F		G		H					
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					
JUSTIFICATION: listening, speaking, writing, reading, complex ideas in																			

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name		c. MI		d. BSN		
BEE		WILLIAM		O		XXXXX		
				e. OCC		b. From To		
				AN		20110101 20111231		
G. INTELLECT AND WISDOM								
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps, increases the breadth and depth of enlightening and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.								
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts, widely recognized as an intellectual leader in professionally related topics. Makes time for study and research. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.				N/O	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. DECISION MAKING ABILITY. Viable and timely problem solution. Contributing elements are judgment and decision-making, ability to balance established intent and the goal of mission accomplishment. Anticipates mental acuity, intuition, and successful utilization of all resources.								
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcome.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast, willing to make difficult decisions.	Widely recognized as a thought leader who solves the most critical, complex problems. Command matched analytical and problem-solving abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.				N/O	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.								
ADV	Majority of judgments are measured, circumspect, relevant and correct.	Decisions are consistent and uniformly correct, tempered by consideration of consequences. Able to identify relevant and assess relevant factors in the decision-making process. Opinions are objective, in favor of impartiality.	Widely recognized as an arbiter. Consistent, superior judgment inspires the confidence of seniors.				N/O	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
JUSTIFICATION:								
<p>decision making. Draws on core values of action.</p> <p>Decisions are consistently correct. Tempered by consideration of consequences. Able to identify relevant and assess relevant factors in the decision-making process. Opinions are objective, in favor of impartiality.</p>								
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES								
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.								
ADV	Occasionally submitted timely or administratively incorrect evaluations. As RO, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for administrative errors. Section Cg were void of substantive, and where possible, quantifiable and supported the markings given.	Prepared unlimited evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section Cg were void of substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO nonconcurred with all inflated reports.				N/O	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
JUSTIFICATION:								
<p>reports that inflated me concurred more reports</p>								

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXXX	AN	20110101	20111231
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>Staff Sergeant Bee has demonstrated exceptional professional skill, enthusiasm, and flexibility during his tour at Field Medical Training Battalion-East. SSgt Bee's performance consistently exceeded the requirements of his assigned duties. His professional and military performance is outstanding. He has been a top performer and a valuable member of the Battalion. An outstanding instructor, his leadership, professional knowledge, and meticulous attention to detail earned him the respect and admiration of students and staff. He directly led and instructed 314 Sailors in various Marine Corps Doctrines in both classroom and field environments which resulted in a 97 percent graduation rate. Combat infantry experience are the backbone for the highly successful training program provided to the Hospital Corpsmen as we prepare them for combat duty with the Makinã Camp. Enthusiastically recommend for promotion and increased responsibility. Be, alion-East</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				SAAD ALAZIZ (Signature of Reporting Senior)		20120123 (Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient		2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur		SAAD ALAZIZ		
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.		DESCRIPTION THE EMINENTLY QUALIFIED MARINE ONE OF THE FEW EXCEPTIONALLY QUALIFIED MARINES ONE OF THE MAJORITY OF THIS GRADE PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE A QUALIFIED MARINE UNSATISFACTORY		COMPARATIVE ASSESSMENT 0 0 3 15 9 2 0 0		
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, request PME, and retention; and put Reporting Senior marks and comments in perspective.						
MRO is a true long-ball hitter in Field Medical Training Battalion-East. Hard working and totally dedicated to mission accomplishment. Leadership skills, instructional ability, and attention to detail are truly impressive. A determined and loyal SNCO who has continues to excel in all aspects of job performance. Promotion and retention is a must.						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				ROLAND E ARELLANO (Signature of Reviewing Officer)		20120124 (Date in YYYYMMDD format)
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE	
13 Feb 2013 1304	Facility: N68093	Class: CAMP JOHNSON SICKCALL CLINIC Provider: GALL JULIUS LOUIS

Allergen information verified by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1327 EST

Vitals

Vitals Written by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1314 EST

BP: 120/79 HR: 98 RR: 16 T: 98.8 °F HT: 68 in WT: 172 lbs BMI: 28.15 BSA: 1.917 square meters
 Tobacco Use: Yes Alcohol Use: Yes
 Pain Scale: 0 Pain Free
 Comments: Phone # 8142414486

Questionnaire AutoCites Refreshed by GALL JULIUS L @ 13 Feb 2013 1320 EST
 Questionnaires

SO Note Written by GALL JULIUS LOUIS @ 18 Feb 2013 1848 EST

Chief complaint

The Chief Complaint is: Final physical.

History of present illness

The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date:
 Currently on active duty. Visit is not deployment-related.
 Excellent general overall feeling.

Pain Seventy 0 / 10.
 Patient feels safe at home.

Past medical/surgical history

Reported:

Medical: Reported medical history.
 Surgical / Procedural: Surgical / procedural history.
 Medications: No medication noncompliance.

Personal history

Social history reviewed staff.
 Behavioral: Tobacco use in the last 10 years.
 Alcohol: Alcohol use AUDIT-C Date:

Review of systems

Systemic: No generalized pain and not feeling tired (fatigue). No fever and no chills. Night sweats. No recent weight loss and no recent weight gain.

Head: Headache. No facial pain and no sinus pain.

Eyes: No vision problems, no blurred vision, no itching of the eyes, and no eye pain. No photophobia and no red eyes.

Otolaryngeal: Hearing loss. No earache. Tinnitus. No nasal discharge, no nasal passage blockage, and no sore throat.

Breasts: No breast lump and no pain in breast.

Cardiovascular: No chest pain or discomfort.

Pulmonary: No dyspnea. Cough. No wheezing.

Gastrointestinal: Appetite not decreased. No pain on swallowing. Heartburn and nausea. No vomiting, no abdominal pain, no jaundice, no bright red blood per rectum, no diarrhea, and no constipation.

Genitourinary: No hematuria, no change in urinary frequency, and no feelings of urinary urgency. No urinary loss of control, no dysuria, and no pain in the flank. No abnormal urethral discharge.

Endocrine: No polydipsia, no temperature intolerance, no hot flashes, no flushing, and no sexual complaints. Inadequacy of penile erection and concerns about reproductive health.

Musculoskeletal: Back pain INTERMITTANT. No muscle aches. Pain localized to one or more joints ANKLE SHOULDER KNEES.

and joint swelling localized to one or more joints INTERMITTANT ANKLE AND KNEES. No limb pain.

Neurological: Dizziness, vertigo, and lightheadedness. No fainting. Memory lapses or loss. No motor disturbances. Gait abnormality. No sensory disturbances.

Psychological: Anxiety, emotional lability, and sleep disturbances. No decreased functioning ability and not thinking about suicide. No homicidal thoughts.

Name/SSN: BEE, WILLIAM OL [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: M11 USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	PCM:	
Insurance: No	Status:	Tel. PCM:	

CHRONOLOGICAL RECORD OF MEDICAL CARE
 THIS INFORMATION IS PROTECTED BY THE PRIVACY ACT OF 1974 (PL-93-579). UNAUTHORIZED ACCESS
 TO THIS INFORMATION IS A VIOLATION OF FEDERAL LAW. VIOLATORS WILL BE PROSECUTED.

STANDARD FORM 608 (REV. 5)
 Prescribed by GSA and ICMR
 FIRM (41 CFR) 101-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE
13 Feb 2013 1304	Facility: N68093 Clinic: CAMP JOHNSON - SICKCALL CLINIC Provider: GALL, JULIUS LOUIS

Skin: No pruritus and no rash. Nails are normal.

Physical findings

Vital Signs:
 • Temperature: Reviewed. • RR: Reviewed. • PR: Reviewed. • Blood pressure: Reviewed.

General Appearance:
 • Oriented to time, place, and person. • Well developed. • Well nourished. • In no acute distress.

Neck:
 Appearance: • Of the neck was normal.
 Palpation: • No tenderness of the neck.
 Thyroid: • Showed no abnormalities.

Eyes:
 General/bilateral:
 Pupils: • PERRL.
 External: • Conjunctiva exhibited no abnormalities.
 Sclera: • Normal.

Ears:
 General/bilateral:
 Tympanic Membrane: • Normal.

Nose:
 General/bilateral:
 Cavity: • Nasal mucosa normal.

Pharynx:
 Oropharynx: • Posterior pharyngeal wall was normal.

Lymph Nodes:
 • Cervical lymph nodes were not enlarged. • Submandibular lymph nodes were not enlarged. • Supraclavicular lymph nodes were not enlarged. • Axillary lymph nodes were not enlarged.

Breasts:
 General/bilateral:
 • Appearance of the breast was normal. • Palpation of the breast revealed no abnormalities.

Cardiovascular:
 Heart Rate And Rhythm: • Normal.
 Heart Sounds: • Normal S1 and S2. • No S3 heard. • No gallop was heard. • No pericardial friction rub heard.
 Murmurs: • No murmurs were heard.
 Edema: • Not present.

Abdomen:
 • Abdomen: SCAR AT UMBILICUS.
 Visual Inspection: • Abdomen was not distended.
 Auscultation: • Bowel sounds were not diminished or absent.
 Palpation: • No abdominal tenderness. • No mass was palpated in the abdomen.
 Liver: • Normal to palpation.
 Spleen: • Normal to palpation.

Musculoskeletal System:
 General/bilateral: • Normal movement of all extremities.

Shoulder:
 Right Shoulder: • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • Shoulder was not tender on palpation SUPERIOR. • Motion was normal ABDUCTION 140 DEGREES. • No pain was elicited on motion. • No pain was elicited during a Neer Impingement test. • No instability was noted.
 Left Shoulder: • Shoulder was tender on palpation ANTERIOR. • Motion was abnormal ABDUCTION 90 DEGREES. • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • No pain was elicited during a Neer Impingement test. • No instability was noted.

Other:
 General/bilateral: • No muscle tenderness.

Neurological:
 System: POS ROMBERG BILAT.
 Motor: • Strength was reduced RIGHT FOOT AND RIGHT QUADS. • No weakness of the right shoulder was observed. • No weakness of the left shoulder was observed.
 Reflexes: • Deep tendon reflexes were abnormal DECREASED RIGHT LEG KJ AND AJ.

Psychiatric:
 Mood: • Euthymic.
 Affect: • Normal.

Skin:
 • Skin: BACK SHOULDERS, LEFT CHEST TATTOOS. • Lesions TRNEA PEDIS BILAT. • Showed no ecchymosis.

Name/SSN: BEE, WILLIAM [REDACTED]		Sex: M	Sponsor/SSN: BEE, WILLIAM [REDACTED]
FMP/SSN: 20 [REDACTED]	Tel H: 814-241-4486	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel W: 814-241-4486	Unit: 31301K61	
PCat: M11 USMC ACTIVE DUTY	CS:	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status:	PCM:	
Insurance: No		Tel. PCM:	

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

* Temperature was normal.

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1328 EST

Test	Site/Specimen	Date
CBC W/Auto Diff	BLOOD	27 Dec 2012 0045
WBC	BLOOD	8.1
RBC	BLOOD	4.63
Hemoglobin	BLOOD	14.7
Hematocrit	BLOOD	41.8
MCV	BLOOD	90.2
MCH	BLOOD	31.7
MCHC	BLOOD	35.2
RDW CV	BLOOD	12.8
Platelets	BLOOD	251
MPV	BLOOD	9.0
Neutrophils	BLOOD	57.8
Lymphocytes	BLOOD	33.1
Monocytes	BLOOD	7.6
Eosinophils	BLOOD	0.9
Basophils	BLOOD	0.6
Neutrophils	BLOOD	4.7
Lymphocytes	BLOOD	2.7
Monocytes	BLOOD	0.6
Eosinophils	BLOOD	0.1
Basophils	BLOOD	0.0
Nucleated RBC/100 WBC	BLOOD	0.0
Nucleated RBC	BLOOD	0.00
WBC	BLOOD	8.1

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1328 EST

Test	Site/Specimen	Date
Lipase	PLASMA	27 Dec 2012 0045
Triacylglycerol Lipase	PLASMA	99

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Test	Site/Specimen	Date
Comprehensive Metabolic Panel W/GFR	PLASMA	27 Dec 2012 0045
Glucose	PLASMA	91
Urea Nitrogen	PLASMA	16
Creatinine	PLASMA	1.20
Sodium	PLASMA	144
Potassium	PLASMA	3.6
Chloride	PLASMA	105
Carbon Dioxide	PLASMA	26
Albumin	PLASMA	4.6
Protein	PLASMA	8.1
Alkaline Phosphatase	PLASMA	76
Alanine Aminotransferase	PLASMA	29
Bilirubin	PLASMA	0.20
Calcium	PLASMA	9.0
Aspartate Aminotransferase	PLASMA	15
GFR	PLASMA	76.25 <=>

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Test	Site/Specimen	Date
Urinalysis	URINE	27 Dec 2012 0050
Color	URINE	Yellow
Appearance	URINE	CLEAR
Specific Gravity	URINE	1.012
Glucose	URINE	NEGATIVE
Ketones	URINE	NEGATIVE
Bilirubin	URINE	NEGATIVE
Blood	URINE	NEGATIVE

Name/SSN: BEE, WILLIAM OLAS [REDACTED]

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

FMP/SSN: 20 [REDACTED]

Tel H: 814-241-4486

Rank: STAFF SERGEANT

DOB: [REDACTED]

Tel W: 814-241-4486

Unit: 3130(K61)

PCat: M1 USMC ACTIVE DUTY

CS:

Outpt Rec, Rm: CAMP JOHNSON BRANCH CLINIC

MC Status: TRICARE PRIME (ACTIVE DUTY)

Status:

PCM:

Insurance: No

Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by CSA and ICMR
FIRMR (41 CFR) 201-45,505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Nitrite	URINE	NEGATIVE
pH	URINE	6.0
Protein	URINE	NEGATIVE
Urobilinogen	URINE	0.2
Leukocyte Esterase	URINE	NEGATIVE
WBC	URINE	0-2
RBC	URINE	0-2

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Urine Culture

Context)	Order #	121227-00030 (Naval Hospital Camp Lejeune Lab Interface)
Context)	Filler #	121227 MI 34607 (Naval Hospital Camp Lejeune Lab Interface)
	Status:	Final
	Ordering Provider:	VENTURA, JOHN CARL
	Priority:	ROUTINE
	Date Ordered:	27 Dec 2012 0100
	Date Resulted:	28 Dec 2012 0811
	COLLECT SAMPLE:	URINE/CC
	BACTERIOLOGY RESULT:	Final result: No growth recovered. 12.28.12 kb
	Specimen:	Urine
	Collected:	27 Dec 2012 0050
	Results:	Final report

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Glucose Fasting	Site/Specimen	18 Dec 2012 1347
Glucose Fasting	SERUM	83 <->

A/P Written by GALL, JULIUS L @ 18 Feb 2013 1848 EST

1. visit for: military services physical (TERMINATION EXAMINATION)

Medication(s): NAFTIFINE (NAFTIN)-TOP 1% CREA - AAA ONCE A DAY #1 RF3 Q: 1 Rf: 3 Start Date: 02/18/2013
 Order Date: 02/18/2013 18:42 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

2. DELAYED POST-TRAUMATIC STRESS DISORDER; CONT MENTAL HEALTH

3. SENSORINEURAL HEARING LOSS

4. MAJOR DEPRESSION, SINGLE EPISODE; CONT VENLAFAXINE

5. TINNITUS SUBJECTIVE

6. DIFFICULTY IN WALKING; TBI EVAL

Consult(s): -Referred To: NEUROLOGY GENERAL CONSULT (Routine) Specialty: NEUROLOGY Clinic: REFERRAL
 MANAGEMENT CENTER Primary Diagnosis: DIFFICULTY IN WALKING Order Date: 02/18/2013 18:45

7. History of traumatic brain injury (PERSONAL HISTORY OF TRAUMATIC BRAIN INJURY (TBI), GLOBAL WAR ON TERRORISM (GWOT) RELATED, HIGHEST LEVEL OF SEVERITY MILD (GLASGOW COMA SCALE 13-15), LOC <1HR, POST TRAUMA AMNESIA <24HR)

8. muscle weakness: RIGHT LEG; ?? LEFT ARM AND HAND

9. SHOULDER IMPINGEMENT BILATERAL: LEFT WORSE THAN RIGHT. PATIENT WISHES NO RX FOR NOW

10. DISORDER OF ANKLE / FOOT JOINT(S): RIGHT ANKLE MARKED DECREASED ROM ALL AXISES, TO SPORTS MED

11. MALE ERECTILE DISORDER

Medication(s): -SILDENAFIL (VIAGRA)-PO 50MG TAB - 1 DAILY PRN #18 RF3 Q: 18 Rf: 3 Start Date: 02/18/2013 Order
 Date: 02/18/2013 18:39 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

12. ESOPHAGITIS CHRONIC REFLUX

Medication(s): -ESOMEPRAZOLE (NEXIUM)-PO 40MG CAP - T1 CAP PO QD #90 RF3 Q: 90 Rf: 3 Start Date: 02/18/2013
 Order Date: 02/18/2013 18:40 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

13. DERMATOPHYTOSIS TINEA PEDIS

14. tobacco use

Name/SSN: BEE, WILLIAM OLAS

Sex: M	Sponsor/SSN: BEE, WILLIAM OLAS
FMP/SSN: 20	Rank: STAFF SERGEANT
DOB:	Unit: 31301K61
PCar: MIT USMC ACTIVE DUTY	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC
MC Status: TRICARE PRMB (ACTIVE DUTY)	PCM:
Insurance: No	Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE
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 FPMR (41 CFR) 101-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF		NCAL CARE
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Disposition Written by GALL, JULIUS L @ 18 Feb 2013 1848 EST

Released w/o Limitations

Follow up: as needed in the CAMP JOHNSON - SICKCALL CLINIC clinic.

Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding.

Administrative Options: Consultation requested

Signed By GALL, JULIUS L (Physician, Camp Johnson, NHCL) @ 18 Feb 2013 1848

CHANGE HISTORY

The following SO Note Was Overwritten by GALL, JULIUS L @ 13 Feb 2013 1418EST.

SO Note Written by DFOULHNE, SAMUEL A @ 13 Feb 2013 1317 EST.

Chief complaint

The Chief Complaint is: Final physical.

History of present illness

The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date
Currently on active duty. Visit is not deployment-related.
Excellent general overall feeling.

Pain Severity 0 / 10.

Patient fee's safe at home.

Past medical/surgical history

Reported:

Medical: Reported medical history
Surgical / Procedural: Surgical / procedural history
Medications: No medication noncompliance.

Personal history

Social history reviewed staff
Behavioral: Tobacco use in the last 10 years
Alcohol: Alcohol use AUDIT-C Date:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

FMP/SSN: [REDACTED]

Tel H: 814-241-4486

Rank: STAFF SERGEANT

DOB: [REDACTED]

Tel W: 814-241-4486

Unit: 3130(K61)

PCat: M11 USMC ACTIVE DUTY

CS:

Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC

MC Status: TRICARE PRIME (ACTIVE DUTY)

Status:

PCM:

Insurance: No

Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE
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Prescribed by GSA and ICMR
FIRM (41 CFR) 201-45.505



DEPARTMENT OF VETERANS AFFAIRS
St Petersburg Regional Office
PO Box 1437
Bay Pines, FL 33731

WILLIAM O. BEE

VA File Number



Represented By:
DISABLED AMERICAN VETERANS

Rating Decision
October 10, 2013

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era. You served in the Marine Corps from June 23, 2000 to April 1, 2013. Rating decision dated September 12, 2013 deferred the following issues pending further development. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for post traumatic stress disorder, primary insomnia, generalized anxiety disorder, panic disorder with agoraphobia, major depressive disorder (claimed as PTSD, depression) is granted with an evaluation of 70 percent effective April 2, 2013.
2. Service connection for traumatic brain injury (TBI), post concussion syndrome, cognitive impairment is granted with an evaluation of 70 percent effective April 2, 2013.
3. Basic eligibility to Dependents' Educational Assistance is established from April 2, 2013.

WILLIAM O. BEE

Page 3 of 6

• The examiner's assessment of your current mental functioning, which is partially reflected in your Global Assessment of Function score found below.

Your Global Assessment of Function (GAF) score is 40. A range of 31-40 indicates some impairment in reality testing or communication; or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood.

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation.

A higher evaluation of 100 percent is not warranted unless the evidence shows total occupational and social impairment, due to such symptoms as:

- gross impairment in thought processes or communication
- persistent delusions or hallucinations
- grossly inappropriate behavior
- persistent danger of hurting self or others
- intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
- disorientation to time or place
- memory loss for names of close relatives, own occupation, or own name.

The effective date of this grant is April 2, 2013. Service connection has been established from the day after your discharge from active duty. When a claim of service connection is received within one year of discharge from active duty, the effective date is the day after discharge.

2. Service connection for traumatic brain injury (TBI), post concussion syndrome, cognitive impairment.

Service connection for traumatic brain injury (TBI), post concussion syndrome, cognitive impairment has been established as directly related to military service.

Service treatment records reveals treatment for and diagnosis of traumatic brain injury, post concussion syndrome, cognitive impairment.

Traumatic Brain Injury Disability Benefits Questionnaire conducted by QTC Medical Services on January 24, 2013, the examiner provides a diagnosis of traumatic brain injury, post concussion syndrome, cognitive impairment and the examiner notes that despite some symptoms overlap with post traumatic stress disorder, the symptoms are primarily due to the traumatic brain injury and there is a 50 percent impairment due to the traumatic brain injury and 50 percent due to the mental disability.

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

Patient: BEE, WILLIAM OLAS
 Treatment Facility: LANDSTUHL
 REGIONAL MEDCEN
 Patient Status: Outpatient

Date: 16 Jun 2010 0910 WEDT
 Clinic: LSL NEUROLOGY

Appt Type: SPEC
 Provider: GRASS,EILEEN C

Reason for Appointment: visit for: examination of subpopulation
 Appointment Comments:
 jf

Injury/Accident Written by GRASS,EILEEN C @ 16 Jun 2010 1013 WEDT
 Date of Accident/Injury: 08 Jun 2010
 Place of Accident/Injury: afghanistan
 Related Cause Code(s): OA-Other Accident

Vitals

Vitals Written by RANDALL,DARRIE C @ 16 Jun 2010 0848 WEDT
 BP: 105/55, HR: 74, T: 97.5 °F, HT: 5' 8", WT: 160 lbs, SpO₂: 98%, BMI: 24.33, BSA: 1.859 square meters,
 Tobacco Use: Yes, Alcohol Use: No, Pain Scale: 0 Pain Free
 Comments: Pt is allergic to cylet

SO Note Written by GRASS,EILEEN C @ 16 Jun 2010 1015 WEDT

Chief complaint

The Chief Complaint is: POSITIVE TBI SCREENING.

History of present illness

The Patient is a 28 year old male.
 He reported: Encounter Background Information: Neurology Consultation Note
 History of Present Illness:
 Twenty-eight year old RHD marine sent from down range for ENT evaluation for bilateral perforated TM's with hearing loss s/p IED blast. Was on patrol, took his squad into a building which set off three IED's, Wearing full gear. Next memory patient had was waking up in CT scanner. Two members of his squad were KIA. Reports headaches, diffuse for two days only. Present sxs of: intermittent nausea, tinnitus, hearing loss, balance issues, short term memory loss, decreased concentration, insomnia, nightmares. Has been evaluated by Behavioral Health at LRMCA-Alta notes not yet available. Patient states was informed had acute stress reaction and was placed on medication. Is now sleeping with medication. Notes state CT of head, chest, abdomen and pelvis were normal. Prior hx of concussion x one last deployment shot at with wall behind him collapsing. Experienced LOC. MOS is infantry, SM's fifth deployment

ROS: A comprehensive neurologic review of systems was performed and was unremarkable except as described above. Further review of constitutional, HEENT, cardiovascular, respiratory, GI, GU, musculoskeletal, integumentary, neurologic, psychiatric, endocrine, and hematologic systems was negative, except as detailed in the HPI.

Past Medical History: [PMH] no reported chronic problems except sxs as listed, hx of migraines as adolescent, surgery-umbilical hernia surgery as child, surgery for varicella in 2006

Medications: Quetiapine 25 mg po hs, mefloquine 250 mg po once weekly, Tylenol 325 mg po prn
 Allergies: [Allergies] Cylet

Family History: [Family] father-alive-MI at age of 26, fraternal grandfather expired at age 48 from MI
 Social History: [Social] tobacco-1/2 pack per day for ten years, ETOH-none, married, one child.

Physical findings

Vital signs:

• Vital signs: Examination:
 Vital Signs: Blood pressure, pulse, respiratory rate, and temperature are as documented and reviewed in AHLTA.
 Gen: Awake, alert, NAD
 HEENT: Oral mucosa moist. Sclerae anicteric.
 Neck: Supple. No bruits; + Pulm: Clear bilaterally.
 Cardiac: Regular rate and rhythm with no murmur or other adventitial sounds.
 Extremities: No cyanosis, clubbing or edema.
 Skin: Free of gross lesions, normal turgor and temperature.
 Mental Status: The patient supplied the history in a coherent and consistent manner with normal attention and concentration. Oriented. Language was normal. Recent and remote memory was intact. Fund of knowledge, as evidenced during history taking was adequate. Mood appropriate with normal affective range.
 Cranial Nerves: Optic discs appeared sharp on direct ophthalmoscopy present bilaterally. Visual fields were full to confrontation. PERRLA. No ptosis. Extraocular movements were full and conjugate, without nystagmus. Facial strength was normal. Tongue and palate strength appear normal. Hearing intact to finger rubbing. No dysarthria. Normal accessory motor strength.
 Motor: Normal muscle tone and bulk throughout.

Name/SSN: BEE, WILLIAM OLAS

Sex: M
 Tel H: 814-241-4486
 Tel W: 814-241-4486

Sponsor/SSN: BEE, WILLIAM OLAS
 Rank: STAFF SERGEANT
 Unit: 31301K61
 Outpt Req. Rm: CAMP JOHNSON BRANCH CLINIC
 PCM:
 Tel. PCM:

FMP/SSN: 20
 DOB:
 PCat: MIT USMC ACTIVE DUTY
 MC Status: TRICARE PRIME (ACTIVE DUTY)
 Insurance: No

CHRONOLOGICAL RECORD OF MEDICAL CARE
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 FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
16 Jun 2010 0234	Facility: Landstuhl RMC	Clinic: LSL Neurology	Provider: GRASS, EILEEN C

Upper Ext Strength: Arm Abductors, Triceps, Biceps, External rotators
 Right 5/5 5/5 5/5 5/5
 Left 5/5 5/5 5/5
 Upper Ext Strength: Finger Extensors, Deep Finger Flexors, Wrist Extensors, Wrist Flexors
 Right 5/5 5/5 5/5 5/5
 Left 5/5 5/5 5/5
 Lower Ext Strength: Hip Flexors, Knee Extensors, Knee Flexors, Ankle Dorsiflexors, Ankle Plantar Flexors
 Right 5/5 5/5 5/5 5/5 5/5
 Left 5/5 5/5 5/5 5/5

Reflexes: Biceps, Brachioradialis, Triceps, Patellar, Achilles, Plantar Response
 Right 2/4 2/4 2/4 2/4 2/4 Flexor
 Left 2/4 2/4 2/4 2/4 Flexor

Coordination: Finger-to-nose and heel-shin maneuvers accurately performed. Normal rapid alternating movements of the fingers, hands, and feet. No tremor.

Sensation: Intact to light touch, pinprick, cold. Romberg's sign is absent.

Gait: Narrow based with normal arm swing and normal heel, toe, and tandem walking.

A/P Last Updated by GRASS, EILEEN C @ 16 Jun 2010 1031 WEDT

1. History of concussion (PERSONAL HISTORY OF TRAUMATIC BRAIN INJURY (TBI), GLOBAL WAR ON TERRORISM (GWOT) RELATED, HIGHEST LEVEL OF SEVERITY MILD (GLASGOW COMA SCALE 13-15), LOC < 1HR, POST TRAUMA AMNESIA < 24HR)

Headaches have resolved. Will Rx Tylenol for pri headache use. Will Rx Phenergan for nausea. Referral to PT for balance studies and OT for cognition studies. Will need f/u with TBI/Neurology CONUS for sx of ataxic gait, short term memory loss, decreased concentration. Will also need f/u with Behavioral Health for combat stress reaction-two members of patient's squad-KIA

Medication(s): -ACETAMINOPHEN--PO 325MG TAB - T 1-2 TAB PO Q4H PRN FOR PAIN/FEVER #100 Rf: 0 Q: 100 Rf: 0
 -PROMETHAZINE--PO 25MG TAB - T 1 TAB PO QID PRN FOR NAUSEA/VOMITING #12 Rf: 0 Q: 12 Rf: 0
 Consult(s): -Referred To: OCC THERAPY TBI - LSL (Routine) Specialty: THERAPY, OCCUPATIONAL Clinic: LSL
 OCCUPATIONAL THERAPY Primary Diagnosis: short term memory loss
 -Referred To: PT CONSULT - LSL TBI (Routine) Specialty: Clinic: LSL PHYSICAL THERAPY Primary
 Diagnosis: ataxic gait

2. exploding military device bomb

3. visit for: military services physical (DURING DEPLOYMENT EXAMINATION)

Medication(s): -ACETAMINOPHEN--PO 325MG TAB - T 1-2 TAB PO Q4H PRN FOR PAIN/FEVER #100 Rf: 0 Q: 100 Rf: 0
 -PROMETHAZINE--PO 25MG TAB - T 1 TAB PO QID PRN FOR NAUSEA/VOMITING #12 Rf: 0 Q: 12 Rf: 0
 Consult(s): -Referred To: OCC THERAPY TBI - LSL (Routine) Specialty: THERAPY, OCCUPATIONAL Clinic: LSL
 OCCUPATIONAL THERAPY Primary Diagnosis: short term memory loss
 -Referred To: PT CONSULT - LSL TBI (Routine) Specialty: Clinic: LSL PHYSICAL THERAPY Primary
 Diagnosis: ataxic gait

4. Visit for: ears/hearing exam (OTHER EXAMINATION OF EARS AND HEARING); Pt reports being evaluated by ENT-notes not available. Will need f/u 2-3 months once CONUS

Disposition Last Updated by GRASS, EILEEN C @ 16 Jun 2010 1033 WEDT

Released w/o Limitations

Follow up: with PCM. Comments: will f/u CONUS. PMR completed for TCC CONUS. I have reviewed the history, physical and neurological exam findings, impression and these recommendations with the patient. There were no significant cultural, educational or language barriers to communication. The patient has voiced the understanding of the information and recommendations provided. A copy of this report of consultation is being electronically forwarded to the referring provider. I have spent over 30 minutes of the appointment in reviewing records, educating the SM in the following areas: the clinical nature of the patient's condition, available diagnostic and treatment options and prognosis.

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: M11 USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status:	PCM:	
Insurance: No		Tel. PCM:	

CHRONOLOGICAL RECORD OF MEDICAL CARE
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STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and (CMR :
 FIRMR (41 CFR) 201-45,505.

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE	
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC Provider: GALL, JULIUS LOUIS

Allergen information verified by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1327 EST

Vitals

Vitals Written by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1314 EST

BP: 120/79, HR: 68, RR: 16, T: 98.8 °F, HT: 68 in, WT: 172 lbs, BMI: 26.15, BSA: 1.917 square meters.
 Tobacco Use: Yes, Alcohol Use: Yes,
 Pain Scale: 0 Pain Free
 Comments: Phone # 8142414486

Questionnaire AutoCites Refreshed by GALL, JULIUS L @ 13 Feb 2013 1320 EST

Questionnaires

SO Note Written by GALL, JULIUS LOUIS @ 18 Feb 2013 1846 EST

Chief complaint

The Chief Complaint is: Final physical.

History of present illness

The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date:
 Currently on active duty. Visit is not deployment-related.
 Excellent general overall feeling.

Pain Severity 0 / 10.

Patient feels safe at home.

Past medical/surgical history

Reported:

Medical: Reported medical history.
 Surgical / Procedural: Surgical / procedural history.
 Medications: No medication noncompliance.

Personal history

Social history reviewed staff.
 Behavioral: Tobacco use in the last 10 years.
 Alcohol: Alcohol use AUDIT-C Date:

Review of systems

Systemic: No generalized pain and not feeling tired (fatigue). No fever and no chills. Night sweats. No recent weight loss and no recent weight gain.

Head: Headache. No facial pain and no sinus pain.

Eyes: No vision problems, no blurred vision, no itching of the eyes, and no eye pain. No photophobia and no red eyes.

Otolaryngeal: Hearing loss. No earache. Tinnitus. No nasal discharge, no nasal passage blockage, and no sore throat.

Breasts: No breast lump and no pain in breast.

Cardiovascular: No chest pain or discomfort.

Pulmonary: No dyspnea. Cough. No wheezing.

Gastrointestinal: Appetite not decreased. No pain on swallowing. Heartburn and nausea. No vomiting, no abdominal pain, no jaundice, no bright red blood per rectum, no diarrhea, and no constipation.

Genitourinary: No hematuria, no change in urinary frequency, and no feelings of urinary urgency. No urinary loss of control, no dysuria, and no pain in the flank. No abnormal urethral discharge.

Endocrine: No polydipsia, no temperature intolerance, no hot flashes, no flushing, and no sexual complaints. Inadequacy of penile erection and concerns about reproductive health.

Musculoskeletal: Back pain INTERMITTANT. No muscle aches. Pain localized to one or more joints ANKLE SHOULDER KNEES,

and joint swelling localized to one or more joints INTERMITTANT ANKLE AND KNEES. No limb pain.

Neurological: Dizziness, vertigo, and lightheadedness. No fainting. Memory lapses or loss. No motor disturbances. Gait abnormality. No sensory disturbances.

Psychological: Anxiety, emotional lability, and sleep disturbances. No decreased functioning ability and not thinking about suicide. No homicidal thoughts.

Name/SSN: BEE, WILLIAM OLA [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLA [REDACTED]	
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: M11 USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	PCM:	
Insurance: No	Status:	Tel. PCM:	

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 Page 4 of 8

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE
13 Feb 2013 1304	Facility: N68093 Clinic: CAMP JOHNSON - SICKCALL CLINIC Provider: GALL, JULIUS LOUIS

Skin: No pruritus and no rash. Nails are normal.

Physical findings

Vital Signs:

• Temperature: Reviewed. • RR: Reviewed. • PR: Reviewed. • Blood pressure: Reviewed.

General Appearance:

• Oriented to time, place, and person. • Well developed. • Well nourished. • In no acute distress.

Neck:

Appearance: • Of the neck was normal.
 Palpation: • No tenderness of the neck.
 Thyroid: • Showed no abnormalities.

Eyes:

General/bilateral:
 Pupils: • PERRL
 External: • Conjunctiva exhibited no abnormalities.
 Sclera: • Normal.

Ears:

General/bilateral:
 Tympanic Membrane: • Normal.

Nose:

General/bilateral:
 Cavity: • Nasal mucosa normal.

Pharynx:

Oropharynx: • Posterior pharyngeal wall was normal.

Lymph Nodes:

• Cervical lymph nodes were not enlarged. • Submandibular lymph nodes were not enlarged. • Supraclavicular lymph nodes were not enlarged. • Axillary lymph nodes were not enlarged.

Breasts:

General/bilateral:
 • Appearance of the breast was normal. • Palpation of the breast revealed no abnormalities.

Cardiovascular:

Heart Rate And Rhythm: • Normal.
 Heart Sounds: • Normal S1 and S2. • No S3 heard. • No gallop was heard. • No pericardial friction rub heard.
 Murmurs: • No murmurs were heard.
 Edema: • Not present.

Abdomen:

• Abdomen: SCAR AT UMBILICUS.
 Visual Inspection: • Abdomen was not distended.
 Auscultation: • Bowel sounds were not diminished or absent.
 Palpation: • No abdominal tenderness. • No mass was palpated in the abdomen.
 Liver: • Normal to palpation.
 Spleen: • Normal to palpation.

Musculoskeletal System:

General/bilateral: • Normal movement of all extremities.

Shoulder:

Right Shoulder: • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • Shoulder was not tender on palpation SUPERIOR. • Motion was normal ABDUCTION 140 DEGREES. • No pain was elicited on motion. • No pain was elicited during a Neer impingement test. • No instability was noted.
 Left Shoulder: • Shoulder was tender on palpation ANTERIOR. • Motion was abnormal ABDUCTION 50 DEGREES. • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • No pain was elicited during a Neer impingement test. • No instability was noted.

Other:

General/bilateral: • No muscle tenderness.

Neurological:

• System: POS ROMBERG BILAT.
 Motor: • Strength was reduced RIGHT FOOT AND RIGHT QUADS. • No weakness of the right shoulder was observed. • No weakness of the left shoulder was observed.
 Reflexes: • Deep tendon reflexes were abnormal DECREASED RIGHT LEG KJ AND AJ.

Psychiatric:

Mood: • Euthymic.
 Affect: • Normal.

Skin:

• Skin: BACK SHOULDERS, LEFT CHEST TATTOOS. • Lesions TINEA PEDIS BILAT. • Showed no ecchymosis.

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMB/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: MI I USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS: Status:	PCM:	
Insurance: No		Tel. PCM:	

CHRONOLOGICAL RECORD OF MEDICAL CARE
 THIS INFORMATION IS PROTECTED BY THE PRIVACY ACT OF 1974 (PL-93-579). UNAUTHORIZED ACCESS
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STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and ICMR
 FIRM (41 CFR) 101-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF		DICAL CARE
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Disposition Written by GALL, JULIUS L @ 18 Feb 2013 1848 EST
 Released w/o Limitations
 Follow up: as needed in the CAMP JOHNSON - SICKCALL CLINIC clinic.
 Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding.
 Administrative Options: Consultation requested

Signed By GALL, JULIUS L (Physician, Camp Johnson, NHCL) @ 18 Feb 2013 1848

CHANGE HISTORY
 The Following SO Note Was Overwritten by GALL, JULIUS L @ 13 Feb 2013 1817 EST
 SO Note Written by OPOSURENE, SAMUEL A @ 13 Feb 2013 1817 EST
 Chief complaint:
 The Chief Complaint is: Final physical
 History of present illness:
 The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date:
 Currently on active duty. Visit is not deployment-related.
 Excellent general overall feeling.

Pain Severity 0 / 10
 Patient feels safe at home.

Past medical/surgical history.
 Reported:

Medical: Reported medical history.
 Surgical / Procedural: Surgical / procedural history.
 Medications: No medication noncompliance.

Personal history

Social history reviewed staff.
 Behavioral: Tobacco use in the last 10 years.
 Alcohol: Alcohol use AUDIT-C Date:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

FMP/SSN: 20 [REDACTED]

Tel H: 814-241-4486

Rank: STAFF SERGEANT

DOB: [REDACTED]

Tel W: 814-241-4486

Unit: 3130(K61)

PCat: M11 USMC ACTIVE DUTY

CS:

Outpl Rec. Rm: CAMP JOHNSON BRANCH CLINIC

MC Status: TRICARE PRIME (ACTIVE DUTY) Status:

PCM:

Insurance: No

Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE
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MICHAEL BLUMENFIELD, M.D.

Board Certified in Psychiatry and Psychosomatic Medicine
by the American Board of Psychiatry and Neurology
5901 Nita Avenue
Woodland Hills, CA 91367

March 8, 2018

Latham & Watkins, LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

Reference Examinee: William Bee
Date of Birth: [REDACTED]

The patient is a 35-year-old male who is a U.S. Marine Veteran who was interviewed by me at the request of the above-referenced legal firm. Prior to the interview, I perused approximately 1500 pages of medical records that were supplied to me and also read a 25-page-summary of these records prepared by CES, Inc. The summary is consistent with the records I have reviewed. I have included the summary as an appendix to this report and I have highlighted in bold some of the entries which I thought were relevant. I am also noting that I have been asked to address specific questions which are of interest to the patient's attorney, Denis Griffin.

1. To what extent, based on a review of Sergeant Bee's medical records and interview of him would he have had been able to fulfill the duties of a rifleman in the Marine Corps following his injury through the discharge in 2013 and was he fit at the time of his discharge to perform the duties of a rifleman and a squad leader in the Marine Corps?
2. What might a full medical board have been likely to find with regard to Sergeant Bee's condition had it been convened following his injury in 2010?

I have also been asked to provide a discussion of the potential link between Sergeant Bee's history of traumatic brain injury's (TBI) and subsequent psychiatric disorders such as Post Traumatic Stress Disorder (PTSD), as well as comments on the extensive severity of his psychiatric and neurological conditions.

Mr. Bee was interviewed by me via Skype (video) on March 7, 2018, as he was living in Jacksonville, North Carolina at the time. He was interviewed (at his request) in privacy, but his wife was allowed to join for several minutes at the end of the interview.

Mr. Bee related in a friendly and cooperative manner. He came across as sincere and did not have trouble expressing himself. Early in the interview, he noted that his wife thought that he should have asked for medical retirement, but he believed that if you are a Marine in the infantry you do not ask for a medical retirement and if you "want a career, you don't do light duty."

Examinee: William Bee Page 16 of 30
Date of Birth: [REDACTED]

- Assessment notes disturbance of gait, work-related condition, and history of traumatic brain injury.
Plan notes released with work duty limitations. Follow-up as needed.
- 09/29/2010 David C. Roska – Consultation Report – The claimant is seen for concussion with brief loss of consciousness.
The claimant has difficulty walking, subjective tinnitus and conductive hearing loss.
Assessment is hearing loss, tinnitus, and ataxia.
Plan is to repeat audiology evaluation.
The claimant is released without limitations. (page 1036)
- 09/29/2010 William Bee, Claimant – Annual Health Record Verification – Completed.
(pages 614-615)
- ****10/04/2010 Karen Johnson, Ph.D. - Carolina Psychological Health Services – Neuropsychological Evaluation –
Based on results of evaluation the claimant has experienced a decline in the following neurocognitive abilities compared to his premorbid/preinjury level of functioning: Mild impairment on measures that require the ability to analyze/synthesize abstract visual information and involve abstract reasoning, visual perception and organization, simultaneous processing and visual-motor coordination. Mild impairment on visual memory measures in terms of immediate and delayed recall of visual-spatial memory for visual information. Mildly impaired processing speed. Mild impairment in ability to inhibit visual responses. Significant proactive interference effects, wherein previously learned information interfered with ability to learn new information. Slightly diminished to mildly impaired motor speed/fine motor coordination.
Diagnoses include: Axis I – Cognitive disorder, NOS. Posttraumatic stress disorder, chronic, moderate. Axis II – No diagnosis. Axis III – Please refer to claimant’s medical record. Axis IV – History of combat trauma with many marines with whom he was close. Status post significant blast exposure. Concern regarding his future. Axis V – Current GAF=40-45.
The claimant is currently on limited-duty status. (pages 606-607 and 825-833)
- 10/12/2010 Randall P. Grove – Neurology Clinic – Follow-Up to Get Off LIMDU – The claimant is on limited duty until 12/17/10, EAS is 2013 and case manager is Carolyn.

Examinee: William Bee Page 17 of 30
Date of Birth: [REDACTED]

Assessment notes history of blast exposure and subsequent concussion with headaches-better, sleep problems-better, cognitive impairment-improved and balance problems-improved.
Plan is to follow-up as needed. Follow-up to get off LIMDU.
On limited duty until 12/17/10. EAS is 2013.

*****10/26/2010 Stephanie S. Meyers – DD Form 2900 – Service branch is Marine Corps. Date arrived is listed as 12/20/2010 with a date departed to be 6/14/2020.

Location of operation was Afghanistan (6 months)
Current unit of assignment is H&S CO 1/6.
Status prior to deployment was active duty.
Status post deployment is maintained/returned to previous status.
The claimant notes his injuries during deployment including blast/explosion shrapnel and ruptured tm x2, fragmentation. He experienced loss of consciousness with a head contusion/injury with subsequent memory problems, balance problems or dizziness, ringing in ears, irritability, headaches and sleep problems following the accidents. The claimant notes having some difficulty with physical health and emotional problems during the past four weeks for which he has seen six or more healthcare providers. He is having nightmares and feels on edge. (page 1199)

11/22/2010 Joel W. Larcombe - Camp Johnson-Sickcall – Health Record – Reason for appointment is TBI.

The claimant reports that he has headaches 2-3x per week for which he takes Tylenol. He gets nauseous and dizzy if he pushes too hard physically. He has occasional nightmares.
On examination there were no abnormal findings.
Assessment notes traumatic brain injury.
Plan includes prazosin HCl, melatonin and ondansetron. Released without limitations. Follow-up as needed with PCM.

05/18/2011 Katherine E. Selleck – Optometry – Routine Eye Exam – Assessment notes refractive error-myopia.

Work status notes released without limitations.

07/18/2011 Michelle Huebner, LT - Nostra Detachment Clinic - Eyewear Prescription (page 763)

10/03/2011 Michelle L. Huebner, M.D. – Interim Tuberculosis Exposure Risk Assessment - The claimant notes that since his last assessment he has not been exposed to anyone suspected of having active tuberculosis.

Examinee: William Bee Page 21 of 30
Date of Birth: [REDACTED]

Assessment is abdominal pain in the left lower belly and major depression, single episode.
Follow-up in five days.
The claimant is released to work duty with limitations.

01/09/2013 Amy Elizabeth McArthur – SO Note – The claimant is seen for bilateral hearing loss.
The claimant has been placed on Limdu for recurrent vertiginous episodes ever since the blast exposure.
On examination, there are no auditory exam findings.
Assessment notes sensorineural hearing loss.
The claimant notes his EAS is in April, but he begins his terminal leave February 18.
The claimant is released without limitations. (page 1125)

01/11/2013 William O. Bee, Claimant - Department of Veterans Affairs – Pre-Discharge Compensation Claim – Claimed disabilities include bilateral feet, bilateral ankles, bilateral knees, bilateral hips, lumbar spine, thoracic spine, cervical spine, bilateral shoulders, bilateral wrists, bilateral hands, TBI, gastrointestinal condition, heartburn, prostate, erectile dysfunction, left teste varicocele, depression, PTSD, hearing loss and tinnitus.
Entered current period of active service on 6/19/00.
Anticipated release from active duty on 4/1/13.
He will not receive retired pay.
He will receive some type of severance pay. (page 992)

01/23/2013 Roy K. Vogel, M.D. - Initial Evaluation of Residuals of Traumatic Brain Injury – Disability Benefits Questionnaire - The Veteran is noted to have had a traumatic brain injury with residuals.
He is diagnosed with post-concussion syndrome/cognitive impairment.
While in Mariah in 2010, he was in an intense fight. He suffered a TBI on 6/8/10, two days before his deployment ended, while under heavy fire in a compound in which the enemy had planted 2 IED's. The IED's blew out both of his ear drums. His first memory after the blast was waking up in a CT scanner at Camp Dwyer in Afghanistan.
In 2008, he was fired upon by a sniper who hit the large rock in front of him. The rock broke loose and hit the claimant on the head. He lost consciousness for about five minutes and refused to be medically evacuated.
In 2001, he was medically evacuated from Onslow Bay. His head hit a rock in the water when he was training as a Scout Swimmer. He has minimal memory of that day.

Examinee: William Bee
Date of Birth: [REDACTED]

Page 27 of 30

Referral to neurology for general consult.

- 02/14/2013 Julius L. Gall, M.D. – Report of Medical Examination – Notable findings include scar at umbilicus. Decreased range of motion of the shoulders-left worse than right. Tattoos on back, shoulders and left chest. Positive Romberg bilaterally with decreased strength in the right foot and quad and decreased deep tendon reflexes in the right leg.
Summary of diagnoses include delayed PTSD, hearing loss with tinnitus, depression, history of traumatic brain injury-stable, weakness of right leg and left arm and hand that is mild, and decreased range of motion of the right ankle. He has ED, GERD, dermatophytosis, and shoulder impingement. Recommendations note continue mental health follow-up.
The claimant is deemed qualified for service.
- 02/21/2013 Julius L. Gall, M.D. - Naval Hospital Camp Lejeune - Medical Screening – Since the claimant's last examination he had transient acute abdominal pain diagnosed as epiploic appendagitis.
- 04/01/2013 Readjustment/Severance/Separation/Special Separation Benefit (SSB) Pay Tax Calculator – Amount of pay is listed as \$106,956.18 with tax @25% for a post-tax amount of \$80,217.14.
- 04/09/2013 Mitchell P. Major, Personnel Chief – Certificate of Release or Discharge from Active Duty – Primary specialty includes infantry unit leader for 2.5 years, rifleman for 9 years 11 months, and recruiter for 3 years.
Type of separation notes discharged.
Character of service is honorable.
Date of discharged 04/01/2013. (page 576)
- 09/12/2013 No signature - Department of Veterans Affairs – Rating Decision – Claim filed as part of VA pre-discharge program prior to separation from service making the effective date for all disabilities shown to be incurred in service will be 4/2/13, the day after discharge.
Decision notes service connection for gastroesophageal reflux disease, hiatal hernia, esophageal stricture (claimed as heartburn) is granted with an evaluation of 10% effective 4/2/13.
Service connection from left hand strain with painful motion of the thumb, index, and long finger (claimed as hand condition, bilateral) is granted with an evaluation of 10% effective 4/2/13.
Service connection for right hand strain with painful motion of the thumb, index and long finger (claimed as hand condition, bilateral) is granted with an evaluation of 10% effective 4/2/13.

Examinee:
Date of Birth:

William Bee

Page 29 of 30

- Basic eligibility to Dependents' Educational Assistance is established from 4/2/13.
- Combined Evaluation for Compensation notes 100% from 4/2/13 (bilateral factor of 7.8% for diagnostic codes 5019, 5228, 5215, 5215, 5228, 5271, 5260, 5019, 5271, 5251, 5279, 5252, 5260, 5251). (pages 514-525)
- 10/16/2013 S.L. Smith, Service Center Manager - Department of Veterans Affairs – Letter – Notification that the after-tax amount of separation pay needs paid back and it is proposed that the claimant reduce benefit payments to \$0.00 per month until after an amount equal to after-tax separation pay allowance is paid back and only then he will begin receiving full monthly VA compensation.
- 10/24/2013 S.L. Smith, Veterans Service Center Manager - Department of Veterans Affairs – Certificate to receive commissary store and exchange privileges from the Armed Forces.
Claim processed.
- 09/09/2014 RO Director, VA Regional Office – Department of Veterans Affairs – Proposed Adjustment to Monthly VA Award.
- 12/01/2014 E.J. McQuade, Veteran Service Center Manager - Department of Veterans Affairs – Letter to the claimant about possible increase of rate to Disability Compensation for disabled veterans. The claimant will be advised of his new monthly rate.
- 02/16/2015 E.J. McQuade, Veterans Service Center Manager - Department of Veterans Affairs – Letter for Summary of Benefits from the Department of Veterans Affairs.
- 09/08/2015 RO Regional Director, VA Regional Office - Department of Veterans Affairs – Letter of Entitlement.
- 02/25/2016 Regional Office Director - Department of Veterans Affairs – Summary of benefits.
- 07/02/2016 Regional Office Director - Department of Veterans Affairs – Letter to the claimant regarding a Special Review of Traumatic Brain Injury Examinations between 2007 and 2015 in Support of Compensation Claims for TBI.

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

Patient: BEE, WILLIAM OLAS
Treatment Facility: NH CAMP LEJEUNE

Date: 13 Feb 2013 1320 EST
Clinic: CAMP JOHNSON - SICKCALL CLINIC

Appt Type: EST
Provider: GALL, JULIUS LOUIS

Patient Status: Outpatient

AutoCites Refreshed by GALL, JULIUS L @ 13 Feb 2013 1320 EST

Problems

Chronic:

- Delayed post-traumatic stress disorder
- Anxiety disorder NOS
- Sensorineural hearing loss
- LLQ abdominal pain
- Prostatitis
- Major depression, single episode
- Visit for: occupational health/fitness exam
- Visit for: postsurgical exam
- Postsurgical state of eye and adnexa
- Ordered visit for: postsurgical exam
- Inquiry and counseling about medication administration and compliance
- Refractive error
- Patient education
- Discussed concerns about tobacco use
- Nicotine dependence
- Overweight
- Emotional lability
- Insomnia
- Anxiety
- Memory lapses or loss
- Late effect of intracranial injury
- Hearing loss
- Tinnitus
- Other physical therapy
- Disturbance of gait
- Healed perforation of the tympanic membrane
- Ataxia
- Cerumen impaction
- Conditions influencing health status
- Difficulty in walking
- Condition was work-related
- Subjective tinnitus
- Conductive hearing loss
- Cerumen impaction in the right ear
- Multiple perforations of the tympanic membrane
- History of traumatic brain injury
- Acute reaction to stress
- Visit for: health exam of defined subpopulation
- Visit for: screening exam
- Visit for: administrative purposes
- Visit for: ears/hearing exam
- Visit for: military services physical
- Myopia
- Patient counseling

Family History

- Family medical history (General FHx)
- No family history of cancer (General FHx)
- Family history of ischemic heart disease before age 50 (General FHx)
- Family history of heart disease (General FHx)
- No family history of mental illness (not retardation) (General FHx)
- Family history of alcoholism (General FHx)
- No family history of hypertension (General FHx)
- Family history [use for free text] (General FHx)
- No family history of glaucoma in both eyes
- No family history of diabetes mellitus

Allergies

- CYLERT: Unknown (RASH - VERIFIED 04OCT2011/JJD)
- CYLERT (PEMOLINE): Unknown (mild rash)

Other PMHs

No Other PMHs Found.

Social History

No Social History Found.

Procedures

- PT EDUCTN, NOT OWISE CLSSFD, NON-PHYS PROVIDR, G OUP, /SESSION: (09 Jan

RECEIVED
 BDD CL
 2013 FEB 19 A 11:38
 VARD 318
 WINSTON-SALEM, NC

Name/SSN: BEE, WILLIAM OLAS/ [REDACTED]

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

FMP/SSN: 20 [REDACTED]

Tel H: 814-241-4486

Rank: STAFF SERGEANT

EOB: [REDACTED]

Tel W: 814-241-4486

Unit: 31301K61

PCat: MII USMC ACTIVE DUTY

Status:

Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC

MC Status: TRICARE PRIME (ACTIVE DUTY)

PCM:

Insurance: No

Tel: PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Allergen information verified by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1327 EST

Vitals

Vitals Written by OFOSUHENE, SAMUEL A @ 13 Feb 2013 1314 EST

BP: 120/79, HR: 98, RR: 16, T: 98.8 °F, HT: 68 in., WT: 172 lbs., BMI: 26.15, BSA: 1.917 square meters,
 Tobacco Use: Yes, Alcohol Use: Yes,
 Pain Scale: 0 Pain Free
 Comments: Phone # 8142414486

Questionnaire AutoCites Refreshed by GALL, JULIUS L @ 13 Feb 2013 1320 EST

Questionnaires

SO Note Written by GALL, JULIUS LOUIS @ 18 Feb 2013 1846 EST

Chief complaint

The Chief Complaint is: Final physical.

History of present illness

The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date:
 Currently on active duty. Visit is not deployment-related.
 Excellent general overall feeling.

Pain Severity 0 / 10.
 Patient feels safe at home.

Past medical/surgical history

Reported:
 Medical: Reported medical history.
 Surgical / Procedural: Surgical / procedural history.
 Medications: No medication noncompliance.

Personal history

Social history reviewed staff.
 Behavioral: Tobacco use in the last 10 years.
 Alcohol: Alcohol use AUDIT-C Date:

Review of systems

Systemic: No generalized pain and not feeling tired (fatigue). No fever and no chills. Night sweats. No recent weight loss and no recent weight gain.
Head: Headache. No facial pain and no sinus pain.
Eyes: No vision problems, no blurred vision, no itching of the eyes, and no eye pain. No photophobia and no red eyes.
Otolaryngeal: Hearing loss. No earache. Tinnitus. No nasal discharge, no nasal passage blockage, and no sore throat.
Breasts: No breast lump and no pain in breast.
Cardiovascular: No chest pain or discomfort.
Pulmonary: No dyspnea. Cough. No wheezing.
Gastrointestinal: Appetite not decreased. No pain on swallowing. Heartburn and nausea. No vomiting, no abdominal pain, no jaundice, no bright red blood per rectum, no diarrhea, and no constipation.
Genitourinary: No hematuria, no change in urinary frequency, and no feelings of urinary urgency. No urinary loss of control, no dysuria, and no pain in the flank. No abnormal urethral discharge.
Endocrine: No polydipsia, no temperature intolerance, no hot flashes, no flushing, and no sexual complaints. Inadequacy of penile erection and concerns about reproductive health.
Musculoskeletal: Back pain INTERMITTANT. No muscle aches. Pain localized to one or more joints ANKLE SHOULDER KNEES, and joint swelling localized to one or more joints INTERMITTANT ANKLE AND KNEES. No limb pain.
Neurological: Dizziness, vertigo, and lightheadedness. No fainting. Memory lapses or loss. No motor disturbances. Gait abnormality. No sensory disturbances.
Psychological: Anxiety, emotional lability, and sleep disturbances. No decreased functioning ability and not thinking about suicide. No homicidal thoughts.

Name/SSN: BEE, WILLIAM OLAS		Sex: M	Sponsor/SSN: BEE, WILLIAM OLAS
FMP/SSN: 20		Tel H: 814-241-4486	Rank: STAFF SERGEANT
DOB:		Tel W: 814-241-4486	Unit: 31301K61
PCat: MIL USMC ACTIVE DUTY		CS:	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC
MC Status: TRICARE PRIME (ACTIVE DUTY)		Status:	PCM:
Insurance: No			Tel. PCM:

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Skin: No pruritus and no rash. Nails are normal.

Physical findings

Vital Signs:

• Temperature: Reviewed. • RR: Reviewed. • PR: Reviewed. • Blood pressure: Reviewed.

General Appearance:

• Oriented to time, place, and person. • Well developed. • Well nourished. • In no acute distress.

Neck:

Appearance: • Of the neck was normal.

Palpation: • No tenderness of the neck.

Thyroid: • Showed no abnormalities.

Eyes:

General/bilateral:

Pupils: • PERRL

External: • Conjunctiva exhibited no abnormalities.

Sclera: • Normal.

Ears:

General/bilateral:

Tympanic Membrane: • Normal.

Nose:

General/bilateral:

Cavity: • Nasal mucosa normal.

Pharynx:

Oropharynx: • Posterior pharyngeal wall was normal.

Lymph Nodes:

• Cervical lymph nodes were not enlarged. • Submandibular lymph nodes were not enlarged. • Supraclavicular lymph nodes were not enlarged. • Axillary lymph nodes were not enlarged.

Breasts:

General/bilateral:

• Appearance of the breast was normal. • Palpation of the breast revealed no abnormalities.

Cardiovascular:

Heart Rate And Rhythm: • Normal.

Heart Sounds: • Normal S1 and S2. • No S3 heard. • No gallop was heard. • No pericardial friction rub heard.

Murmurs: • No murmurs were heard.

Edema: • Not present.

Abdomen:

• Abdomen: SCAR AT UMBILICUS.

Visual Inspection: • Abdomen was not distended.

Auscultation: • Bowel sounds were not diminished or absent.

Palpation: • No abdominal tenderness. • No mass was palpated in the abdomen.

Liver: • Normal to palpation.

Spleen: • Normal to palpation.

Musculoskeletal System:

General/bilateral: • Normal movement of all extremities.

Shoulder:

Right Shoulder: • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • Shoulder was not tender on palpation SUPERIOR. • Motion was normal ABDUCTION 140 DEGREES. • No pain was elicited on motion. • No pain was elicited during a Neer impingement test. • No instability was noted.

Left Shoulder: • Shoulder was tender on palpation ANTERIOR. • Motion was abnormal ABDUCTION 90 DEGREES. • Pain was elicited during a Hawkins-Kennedy impingement test SLT. • No swelling. • No erythema. • No warmth. • No misalignment. • No pain was elicited during a Neer impingement test. • No instability was noted.

Other:

General/bilateral: • No muscle tenderness.

Neurological:

• System: POS ROMBERG BILAT.

Motor: • Strength was reduced RIGHT FOOT AND RIGHT QUADS. • No weakness of the right shoulder was observed. • No weakness of the left shoulder was observed.

Reflexes: • Deep tendon reflexes were abnormal DECREASED RIGHT LEG KJ AND AJ.

Psychiatric:

Mood: • Euthymic.

Affect: • Normal.

Skin:

• Skin: BACK SHOULDERS, LEFT CHEST TATTOOS. • Lesions TINEA PEDIS BILAT. • Showed no ecchymosis.

Name/SSN: BEE, WILLIAM OLAS		Sex: M	Sponsor/SSN: BEE, WILLIAM OLAS
FME/SSN: 20	Tel H: 814-241-4486	Rank: STAFF SERGEANT	
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HEALTH RECORD **CHRONOLOGICAL RECORD OF MEDICAL CARE**

13 Feb 2013 1304 Facility: N68093 Clinic: CAMP JOHNSON - SICKCALL CLINIC Provider: GALL, JULIUS LOUIS

Nitrite	URINE	NEGATIVE
pH	URINE	6.0
Protein	URINE	NEGATIVE
Urobilinogen	URINE	0.2
Leukocyte Esterase	URINE	NEGATIVE
WBC	URINE	0-2
RBC	URINE	0-2

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Urine Culture

Order # 121227-00030 (Naval Hospital Camp Lejeune Lab Interface)

Context)

Filler # 121227 MI 34607 (Naval Hospital Camp Lejeune Lab Interface)

Context)

Status: Final

Ordering Provider: VENTURA, JOHN CARL

Priority: ROUTINE

Date Ordered: 27 Dec 2012 0100

Date Resulted: 28 Dec 2012 0811

COLLECT_SAMPLE: URINE/CC

BACTERIOLOGY RESULT: Final result: No growth recovered. 12.28.12 kb

Specimen: Urine

Collected: 27 Dec 2012 0050

Results: Final report

Lab Result Cited by GALL, JULIUS L @ 13 Feb 2013 1327 EST

Glucose Fasting Site/Specimen 18 Dec 2012 1347

Glucose Fasting SERUM 83 <>

A/P Written by GALL, JULIUS L @ 18 Feb 2013 1848 EST

1. visit for: military services physical (TERMINATION EXAMINATION)

Medication(s): -NAFTIFINE (NAFTIN)--TOP 1% CREA - AAA ONCE A DAY #1 RF3 Qt: 1 Rf: 3 Start Date: 02/18/2013

Order Date: 02/18/2013 18:42 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

2. DELAYED POST-TRAUMATIC STRESS DISORDER: CONT MENTAL HEALTH

3. SENSORINEURAL HEARING LOSS

4. MAJOR DEPRESSION, SINGLE EPISODE: CONT VENLAFAXINE

5. TINNITUS SUBJECTIVE

6. DIFFICULTY IN WALKING: TBI EVAL

Consult(s): -Referred To: NEUROLOGY GENERAL CONSULT (Routine) Specialty: NEUROLOGY Clinic: REFERRAL

MANAGEMENT CENTER Primary Diagnosis: DIFFICULTY IN WALKING Order Date: 02/18/2013 18:45

7. History of traumatic brain injury (PERSONAL HISTORY OF TRAUMATIC BRAIN INJURY (TBI), GLOBAL WAR ON TERRORISM (GWOT) RELATED, HIGHEST LEVEL OF SEVERITY MILD (GLASGOW COMA SCALE 13-15), LOC < 1HR, POST TRAUMA AMNESIA < 24HR)

8. muscle weakness: RIGHT LEG; ?? LEFT ARM AND HAND

9. SHOULDER IMPINGEMENT BILATERAL: LEFT WORSE THAN RIGHT. PATIENT WISHES NO RX FOR NOW

10. DISORDER OF ANKLE / FOOT JOINT(S): RIGHT ANKLE MARKED DECREASED ROM ALL AXISES; TO SPORTS.MED

11. MALE ERECTILE DISORDER

Medication(s): -SILDENAFIL (VIAGRA)--PO 50MG TAB -1 DAILY PRN #18 RF3 Qt: 18 Rf: 3 Start Date: 02/18/2013 Order

Date: 02/18/2013 18:39 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

12. ESOPHAGITIS CHRONIC REFLUX

Medication(s): -ESOMEPRAZOLE (NEXIUM)--PO 40MG CAP - T1 CAP PO QD #90 RF3 Qt: 90 Rf: 3 Start Date: 02/18/2013

Order Date: 02/18/2013 18:40 Ordered By: GALL, JULIUS L Ordering Provider: GALL, JULIUS LOUIS

13. DERMATOPHYTOSIS TINEA PEDIS

14. tobacco use

Name/SSN: BEE, WILLIAM OLAS [REDACTED]

Sex: M	Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]
FMP/SSN: 20 [REDACTED]	Rank: STAFF SERGEANT
DOB: [REDACTED]	Unit: 31301K61
PCat: M11 USMC ACTIVE DUTY	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC
MC Status: TRICARE PRIME (ACTIVE DUTY)	PCM:
Insurance: No	Tel. PCM:
Tel H: 814-241-4486	
Tel W: 814-241-4486	
CS:	
Status:	

CHRONOLOGICAL RECORD OF MEDICAL CARE
 THIS INFORMATION IS PROTECTED BY THE PRIVACY ACT OF 1974 (PL-93-579). UNAUTHORIZED ACCESS
 TO THIS INFORMATION IS A VIOLATION OF FEDERAL LAW. VIOLATORS WILL BE PROSECUTED.

STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and ICMR
 FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
13 Feb 2013 1304	Facility: N68093	Clinic: CAMP JOHNSON - SICKCALL CLINIC	Provider: GALL, JULIUS LOUIS

Disposition Written by GALL, JULIUS L @ 18 Feb 2013 1848 EST

Released w/o Limitations

Follow up: as needed in the CAMP JOHNSON - SICKCALL CLINIC clinic.

Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding.

Administrative Options: Consultation requested

Signed By GALL, JULIUS L (Physician, Camp Johnson, NHCL) @ 18 Feb 2013 1848

CHANGE HISTORY

The following SO Note Was Overwritten by GALL, JULIUS L @ 13 Feb 2013 1416 EST.

SO Note Written by OFOSUJHENE, SAMUEL A @ 13 Feb 2013 1817 EST

Chief complaint

The Chief Complaint is: Final physical.

History of present illness

The Patient is a 30 year old male.

<<Note accomplished in TSWF-CORE>>30 year male patient stated no medical problem. Patient stated he is here for final physical

A PHA has been completed in past year. Date:

Currently on active duty. Visit is not deployment-related.

Excellent general overall feeling

Pain Severity 0 / 10.

Patient feels safe at home.

Past medical/surgical history

Reported:

Medical: Reported medical history.

Surgical / Procedural: Surgical / procedural history.

Medications: No medication noncompliance.

Personal history

Social history reviewed staff.

Behavioral: Tobacco use in the last 10 years.

Alcohol: Alcohol use AUDIT-C Date:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sex: M	Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]
FMP/SSN: 20 [REDACTED]	Tel H: 814-241-4486	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel W: 814-241-4486	Unit: 31301K61	
PCat: MIF USMC ACTIVE DUTY	CS:	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status:	PCM:	
Insurance: No		Tel PCM:	

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICMR
FIRMR (41 CFR) 101-45.505



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

CES
Docket No. 7673-22
Ref: Signature Date

WILLIAM O BEE
C/O DARRYL STEENSMA
LATHAM & WATKINS LLP
12670 HIGH BLUFF DRIVE
SAN DIEGO CA 92130

Dear Mr. Bee:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code, and the Order of the U.S. Court of Federal Claims (COFC) (Case No. 21-1970), dated 21 September 2022, remanding your case to the Board for Correction of Naval Records [hereinafter referred to as the Board] to re-adjudicate your request for a retroactive permanent medical retirement. After careful review and consideration of your application and all of the relevant evidence of record, the Board continued to find insufficient evidence of any material error or injustice warranting relief. Accordingly, your application has been denied.

A three-member panel of the Board, sitting in executive session, reconsidered your application on 30 March 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board, and the above-referenced Order of the COFC. Documentary material considered by the Board included your application, together with all material submitted in support thereof; your Complaint filed with the COFC on 16 March 2022; the Joint Motion for a Voluntary Remand filed with the COFC on 19 September 2022 and the Order of the COFC filed on 21 September 2022 granting that motion and remanding your case to this Board; the case file pertaining to your previous application to the Board in Docket No. 3901-18, which included your original DD Form 149 with attachments, the decision letter informing you of the Board's decision in Docket No. 3901-18 dated 5 August 2019, an advisory opinion (AO) prepared by the Senior Medical Advisor for the Secretary of the Navy's Counsel of Review Board (CORB) dated 4 April 2019, and your rebuttal to that AO dated 23 July 2019; an AO prepared by the Board's in-house Physician Advisor dated 18 February 2023, and your rebuttal to that AO dated 16 March 2023; relevant portions of your naval record; and applicable statutes, regulations, and policies.

The Board adopts and incorporates by reference the factual background of your case discussed in the decision letter for Docket No. 3901-18. On 25 July 2019, the Board denied your previous application requesting that your naval record be corrected to reflect that you were medically

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retired as of your discharge date of 1 April 2013 due to your medically unfitting conditions of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) in Docket No. 3901-18.¹ In finding insufficient evidence to establish the existence of probable material error or injustice, the Board substantially concurred with the AO provided by the CORB's Senior Medical Advisor, which, while recognizing the existence of your PTSD and TBI conditions during the relevant time period, found that your medical and performance records did not reflect a significant level of functional impairment resulting from these conditions. Among the evidence relied upon by the Board in Docket No. 3901-18 to find that your conditions did not create a sufficient occupational impairment were your fitness reports (FITREP) documenting your performance during the final 28 months of your service in the Marine Corps while you were serving as an Instructor at Field Medical Training Battalion - East (FMTB-E).² These FITREPs reflected that you were consistently outperforming the majority of your peers during the relevant period that you claimed to be unfit for continued service. The Board also noted that you requested to be discharged through the Voluntary Separation Pay (VSP) program, which undermined your claim that you were erroneously discharged. Next, the Board noted that your separation history and physical examination (SHPE), which medically cleared you for separation on 13 February 2013, provided compelling, contemporaneous medical evidence of your fitness for continued service during the relevant period in question, since the standard for being physically qualified for separation is the same as that for fitness for continued service. Finally, the Board did not find the disability ratings assigned by the Department of Veterans Affairs (VA) to be persuasive since VA service-connection determinations are unrelated to fitness determinations.

On 16 March 2022, you filed suit in the COFC, asserting that the Board's decision in Docket No. 3901-18 was arbitrary and capricious, unsupported by substantial evidence, and contrary to law. Specifically, you alleged that the Board's failure to make explicit findings regarding the duties of your "office, grade, rank, or rating" as an Infantry Unit Leader (MOS code 0369) rendered its decision arbitrary and capricious, unsupported by substantial evidence, and contrary to law; that the Board's decision was unsupported by substantial evidence because it "entirely failed to consider" evidence on the relevant criteria for determining your fitness for duty under DODI 1332.38;³ and that the Board's conclusion that you were fit was not supported by substantial evidence since it relied on "improper grounds," such as the above referenced FITREPs prepared by non-Marines evaluating your performance in a non-operational training billet outside your rating, your participation in the VSP, the results of your SHPE, and the failure to consider other evidence of your claimed disability. Based upon these assertions of error, you requested

¹ The Board acknowledges that you had other diagnosed conditions, to include cognitive disorder and post-concussive syndrome. However, your argument in Docket No. 3901-18 focused upon the failure of the Marine Corps to refer you to a Medical Evaluation Board (MEB) due to your PTSD and TBI conditions. As your other diagnosed conditions were secondary to these primary conditions, their effects were factored into the Board's analysis.

² You received four FITREPs assessing your performance in this capacity during this period. The first, covering the reporting period 16 November 2010 to 31 December 2010, was not observed due to its short duration. The second, covering the reporting period 1 January 2011 to 31 December 2011, is referenced below as the outlier FITREP which included an anomalous Billet MOS code for your position. The third covered the reporting period 1 January 2012 to 31 December 2012. The fourth and final FITREP, issued upon your discharge from the Marine Corps, covered the reporting period 1 January 2013 to 1 April 2013.

³ *Physical Disability Evaluation*, 14 November 1996.

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judgment on the administrative record and that the Court direct the Board to correct your naval record to reflect that you were medically retired or, alternatively, vacate the Board's decision in Docket No. 3901-18 and remand the case for reconsideration. On 19 September 2022, you joined with the Government in a motion to the Court requesting that your case be remanded to this Board for reconsideration. Specifically, you proposed that the Court remand your case and direct the Board to reconsider its decision in Docket No. 3901-18, and to correct any errors in or remove any injustices from your record identified during that reconsideration; afford you the opportunity to submit any additional claims, evidence, and arguments within 60 days of the remand order; consider requesting new AOs addressing the issues set forth in the joint motion;⁴ and apply the relevant criteria for assessing a service member's fitness, as set forth in SECNAVINST 1850.4E⁵ and DODI 1332.38, to determine whether you were unfit to perform the duties of your office, grade, rank, or rating. On 21 September 2022, the COFC granted the joint motion, remanding your case to the Board.

Your additional matters were received by the Board under the cover of a signed DD Form 149 on 22 November 2022. Included among these matters was a brief prepared by your counsel to supplement the arguments raised in your previous application in Docket No. 3901-18, and to address the Board's previous decision in that case.⁶

As a preliminary matter, the Board notes that your complaint to the COFC and your subsequent application misstates and reflects a fundamental misunderstanding of the function and composition of this Board. While you are correct that SECNAVINST 1850.4E establishes that "[t]he sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank, or rating," your argument ignores the fact that it assigns the responsibility of making that determination to the Physical Evaluation Board (PEB), which is normally composed of two senior line officers and a senior Medical Corps officer who were chosen for the task based upon their wide medical and/or military experience, proven performance and education. This Board is not the PEB and does not make medical fitness determinations. The statutory and regulatory function of this Board, per 10 U.S.C. § 1552 and SECNAVINST 5420.193,⁷ is to correct errors in, and remove injustices from, naval records. While this Board is empowered to correct your record to reflect that you were medically retired if it finds the existence of an error or injustice in the fact that you were not, it does not make fitness determinations. The civilian employees of the Department of the Navy who constitute this Board, none of whom have medical expertise and only some of whom incidentally have experience as a line officer in their past, are neither qualified nor mandated to make this determination. Neither DODI 1332.38 nor SECNAVINST 1850.4E applies to this Board; rather, they provide regulatory guidelines for the Board to use in assessing whether there exists an error or injustice in your naval record. Your reliance on the case of *Nyan v. United States* to assign the responsibility to make a fitness determination is to the Board is misplaced, as

⁴ This was the basis for the AO provided by the Board's in-house Physician Advisor, dated 18 February 2023.

⁵ *Department of the Navy (DON) Disability Evaluation Manual*, 30 April 2002.

⁶ Also included were documents related to the pending litigation in the COFC, to include the administrative record for the case (which included the case file for Docket No. 3901-18); several motions for and in response to your motion for judgment on the administrative record; and the aforementioned joint motion for remand and the remand order itself.

⁷ *Board for Correction of Naval Records*, 19 November 1997.

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the COFC commented on the standard applied by the PEB in making its fitness determination in that case and not upon any decision of this Board.⁸ Further, per SECNAVINST 5420.193, the burden is on you, the applicant, to prove the existence of an error or injustice in your naval record to this Board. Accordingly, this Board did not err in failing to make explicit findings as to the duties of your “office, grade, rank, or rating” as an Infantry Unit Leader at the E-6 paygrade in Docket No. 3901-18. The burden was on you to prove that you were reasonably unable to perform the duties of your office, grade, rank, or rating due to your medical conditions at the time of your discharge despite the fact that none of the numerous medical providers who treated or evaluated you over the final three years of your enlistment ever believed that they warranted referral to the MEB, and not upon the Board to prove that you were capable of performing those duties. As was stated in the decision letter for Docket No. 3901-18, the evidence you submitted was insufficient to establish the existence of a probable material error or injustice. The Board continues to find that you did not meet your burden in this regard.

In reviewing your application, the Board did not question the existence of either your TBI or PTSD conditions during the time period in question.⁹ The existence of these conditions was apparent from your medical record, and your receipt of disability compensation from the VA for these conditions provides further confirmation of their existence during the relevant period in question. However, the mere existence of these conditions does not imply that you were medically unfit. There are thousands of Service members successfully continuing to serve today with these conditions, many of whom with more severe symptoms than was reflected in your medical records or which you reported. As you stated, the sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay.¹⁰ Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that the member may reasonably be expected to perform in his or her office, grade, rank or rating. The preponderance of the evidence in your case definitively demonstrated that you were fully capable of performing the duties of your office, grade, rank or rating despite your medical conditions.

The Board also did not doubt your heroism or selfless service to the nation. The members were truly moved by the personal sacrifices that you made and the bravery that you exhibited throughout your service in the Marine Corps and over multiple combat deployments. Your combat record was among the most extensive and noteworthy that the members have seen. For this reason, the Board truly regrets that it is unable to grant you the relief that you have requested. If there was any merit-based recognition or benefit that you have been denied, the

⁸ On remand, this Board agreed with the Plaintiff’s contention in the *Nyan* case that the PEB applied the wrong standard in evaluating the Plaintiff’s fitness for duty, and therefore directed that the Plaintiff’s naval record be corrected to reflect that he was placed on the Temporary Disability Retired List.

⁹ The Board also acknowledged the previous TBIs that you incurred in combat prior to June 2010. However, except for the cumulative effect that these TBIs may have had upon the severity of your conditions, the Board did not find the occurrences of these previous TBIs to be relevant with regard to your fitness for continued service since you had returned to the performance of your regular duties after each such occasion. As such, none of the previous incidents of TBI made you reasonably unable to perform the duties of your office, grade, rank, or rating. Consideration of the cumulative effect of these TBIs was factored into the Board’s analysis through the manifestation of your conditions after the June 2010 TBI, as reflected in your medical records and FITREPs.

¹⁰ See SECNAVINST 1850.4E, paragraph 3301.

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Board would have been inclined to take action to ensure that your selfless combat record was properly recognized and rewarded. Unfortunately, however, the relief that you seek from this Board is not based on merit. Medical retirements are granted based upon the existence of certain criteria, rather than as a reward for meritorious and/or valorous conduct, and to grant you such relief based upon the latter absent the former would create an unsustainable precedent and be unfair to countless other Service members who did not meet those criteria despite their meritorious service. Accordingly, the Board was regrettably unwilling to grant you the relief you requested despite its admiration of and appreciation for your service.

The Board found insufficient evidence of any error or injustice in the failure of the Marine Corps to refer you to an MEB at any time after your evacuation from Afghanistan in June 2010. As you noted in your original application for Docket No. 3901-18, the Navy's Manual of the Medical Department (MANMED) specifies that an MEB shall be convened where a physician determines that any of the following conditions are met: (a) A member has a condition that appears to significantly interfere with performance of duties appropriate to the member's office, grade, rank or rating; (b) A member has a condition that will prohibit returning the patient to his or her parent command in a medically unrestricted duty status following appropriate light duty; or (c) A member has a condition that may seriously compromise the member's health or well-being if the member were to remain in the military service (e.g., continued service would likely result in extended hospitalization(s), requirements for close medical supervision, or potential aggravations of the existing conditions.¹¹ Contrary to your claim, however, the objective medical evidence establishes that none of these conditions were met.

Following are the relevant excerpts from your medical record during the period in question:¹²

- On 14 June 2010, six days after incurring a TBI as a result of the explosion of improvised explosive devices (IED) planted along the wall of the building that you were occupying, the clinical impression recorded by the provider at the Landstuhl Regional Medical

¹¹ See NAVMED P-177, Manual of the Medical Department, Article 18-4 (Conditions and Circumstances Requiring the Convening of an MEB). It also provides that a MEB shall be initiated when a physician determines that: (d) A member has a condition that may prejudice the best interests of the Government if the member were to remain in the military service; (e) A member has a condition that requires assignment limitations (e.g., geographic restraints or assignment near a particular military treatment facility (MTF) with specialty services, etc.); (f) An inactive reservist incurs or aggravates an injury or illness during a period of active service and the period of required treatment, rehabilitation, or convalescence is expected to exceed 12 weeks or require retention beyond authorized active duty service orders; (g) A member refuses reasonable medical or dental treatment (including surgery) and the member's ability to perform medically unrestricted duty is suspect; (h) A member who has "self-referred" for elective care outside the direct Military Health System) has sustained an untoward outcome that calls into question the member's continued fitness for service as a result of that care; and (i) A member has a condition which indicates the need to receive an organ transplant. Of these additional bases for referral to a MEB, only (e) might be applicable to your situation. However, for the same reasons that the Board found that the objective medical evidence did not sustain your referral under the criteria you cited, the Board also did not believe that it would support the conclusion that your condition required assignment limitations.

¹² These excerpts were gathered from the 18 February 2023 AO provided by the Board's Medical Advisor, and the summary of your medical records relied upon and attached to the report provided by Dr. Blumenfield.

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Center (LRMC) Neurology Clinic was that your TBI was “mild,” although symptomatic.¹³ You were released without any medical limitations.

- On 15 June 2010, the LRMC Psychiatric Clinic diagnosed you with Acute Stress Disorder; prescribed medication for anxiety, insomnia, and nightmares; and directed your return to CONUS for further psychiatric treatment. This initial examination, however, noted no impairments to your memory, concentration, attention, thought processes, insight, or judgment. During a follow-up the next day, you reported sleeping better with the assistance of the prescribed medication and no exhibited no safety issues which would impede your return to CONUS.
- On 16 June 2010, the LRMC Neurology Clinic recorded the results of your initial examination, noting that your neurological and mental status exams were within normal range and that the CT scan of your head was reported as normal. At the time of this assessment, your headaches had resolved and you were prescribed medication for nausea as needed. You were also referred to physical therapy for balance studies; occupational therapy for cognition studies; follow-up with mental health for combat stress reaction; and to neurology in CONUS for symptoms of ataxic gait, short-term memory loss, and decreased concentration. You were released from this assessment without limitations with scheduled movement to CONUS.
- On 17 June 2010, you were seen by the LRMC Occupational Therapy Clinic pursuant to the above-referenced referral from the Neurology Clinic memory loss. The assessment noted memory lapses, including slight memory loss and late effect of intracranial injury. Your rehabilitation prognosis was noted as excellent, and you were released without any limitations.
- On 21 June 2010, you were released from the Neurology Clinic upon your medical evacuation to CONUS, and assigned to limited duty (LIMDU) status for recurrent vertiginous episodes.¹⁴
- After your return to CONUS, on 3 August 2010 you were evaluated for continued care for your concussion from the 8 June 2010 IED explosion at the Ear, Nose, and Throat (ENT) Clinic at Naval Health Clinic Camp Lejeune (NHCL). You were diagnosed with hearing loss, ataxia, tinnitus, and the clinic recommended a plan to repeat audiology evaluation and continue vestibular rehabilitation. You were released without any medical limitations.
- On 17 August 2010, you had your initial examination at the NHCL Physical Therapy (PT) Department based upon a referral for ongoing disequilibrium/ataxic walk, which reportedly had improved with vestibular rehabilitation at LRMC. Your ataxic walk and symptoms of occasional headache were noted, but you denied dizziness or balance issues. You were diagnosed with Uncompensated Vestibular Defect, and assigned a PT treatment program involving home exercise, gaze stabilization, and vision for high-level balance activities. Although you were advised not to run, you were permitted to use an elliptical trainer and advised to continue with LIMDU.

¹³ You endorsed symptoms of headache, dizziness, nausea/vomiting, and ringing in ears at the time of the injury, and nausea/vomiting, dizziness, sleep disturbance, and decreased concentration at the time of the evaluation.

¹⁴ The provider noted your end of active service date in 2013 in this entry, which you cited as an indication that the provider viewed this injury as a long-term concern. The Board did not see the logic in this conclusion. Reference to your EOAS date in the record was more likely made as an indication that there was plenty of time for recovery.

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- In September 2010, your LIMDU status originally assigned upon your return to CONUS on 21 June 2010 was formalized, as your first period of LIMDU, retroactive to 21 June 2010 (i.e., the date of your return to CONUS) through 20 December 2010, was documented by a Navy Medical Corps officer at the Battalion Aid Station based upon your diagnosis of Mild TBI (with loss of consciousness). Your current condition was documented as “Good Getting Better.”
- On 21 September 2010, after approximately a month in your PT program, you reported to the NHCL PT Department that your balance felt “a lot better,” that the frequency of your headaches had reduced to only one per week, and that you had no dizziness. You had started running occasionally without symptoms, had met all treatment goals, and were assessed as “functioning at high level and any vestibular loss is well compensated.” You were discharged from further PT treatment as complete, and returned to your existing LIMDU status with only the duty limitations previously assigned by neurology.
- On 4 October 2010, you received a neuropsychological evaluation by a civilian provider, which diagnosed you with cognitive disorder (not otherwise specified), and PTSD (Chronic, Moderate) with significant proactive interference effects, wherein previously learned information interfered with your ability to learn new information.¹⁵
- On 12 October 2010, you had a follow-up appointment at the NHCL Neurology Clinic. You reported improvement in you headaches, sleep problems, cognitive impairment, and balance problems. Accordingly, your neurology provider terminated your LIMDU status early and returned you to full duty with instructions to see your primary care provider and to follow-up with Neurology as needed.¹⁶¹⁷

After the NCHL Neurology Clinic terminated your LIMDU status and returned you to full duty with no medical restrictions on 12 October 2010, your medical records reflect only two medical encounters related to your TBI and/or PTSD conditions over the next two years until after you requested and were approved for early discharge through the VSP program in late 2012/early 2013. On 22 November 2010, you reported to sick call at the Camp Johnson Branch Medical Clinic (BMC), where you reported headaches approximately two to three times per week, for which you took Tylenol, and that you get nauseous and dizzy if you push yourself too hard physically. Almost a year later, you again reported to the Camp Johnson BMC Sick Call Clinic for a medical evaluation and prescription refill. On both occasions, you were returned to duty without any medical limitations.¹⁸

¹⁵ Mild impairment was noted across multiple measures such as your ability to analyze/synthesize abstract visual information/reasoning, visual perception and organization, simultaneous processing, visual memory, processing speed, and interference effect of learned information interfering with ability to learn new information. Slight diminishment to mild impairment was noted for you motor speed/fine motor coordination.

¹⁶ Per your own application, the decision to terminate your LIMDU status was pursuant to your own request.

¹⁷ There is no evidence that you ever followed up with the Neurology Clinic.

¹⁸ In addition to these two incidents, on 14 September 2012, almost two years after your restoration to full duty status, you were seen at the Camp Johnson BMC Sick Call Clinic for a mental health consultation for depression, characterized by extreme irritability, decreased memory and concentration, and anhedonia, which also could have been related to your PTSD and/or TBI conditions. The provider’s assessment was Major Depression (single episode), and you were released from this consultation without any medical limitations. One week later, you had a follow-up consultation, during which you reported feeling and sleeping better, reduced irritability, and improved mood, enjoyment, and sex.

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- On 27 December 2012, you complained of abdominal pain at the NHCL Emergency Room (ER). On examination, the provider found mild tenderness to palpation of your lower left quadrant. You also claimed constipation. During a follow-up examination at the Camp Johnson BMC Clinic on 4 January 2013, you reported that the pain had lessened since your visit to the ER a week earlier. After reviewing the lab results, the provider's assessment was abdominal pain in the left lower belly and major depression, single episode.¹⁹ You were released to work duty with limitations.²⁰
- On 9 January 2013, while being seen for bilateral hearing loss, the provider entered a note that you had been placed on LIMDU for recurrent vertiginous episodes ever since your blast exposure.²¹
- On 22 January 2013, you presented at the NHCL Mental Health Clinic (MHC) with a five-month history of exacerbated depression. You reported "irritability" for no reason, with the additional stressor of your impending discharge in April 2013. Your mental status examination was deemed unremarkable, with no impairment to memory, cognition, judgment, insight, or mood. You were diagnosed with Anxiety Disorder (NOS), and your medications were adjusted.
- On 23 January 2013, you received a VA Compensation and Pension (C&P) Examination from a Dr. Roy Vogel related to your VA disability claim for benefits based on PTSD. The results of this C&P Examination are discussed in more detail below.
- On 4 February 2013, you were referred back to the NHCL MHC for acute anxiety and anger with history of anxiety and depression. You reported six months increasing TBI and PTSD symptoms with family and marital stress along with your pending end of military service. Your mental status examination was notable for moderate psychomotor agitation and mild to moderate anxious mood. Your cognitive processes, memory, judgment, and insight was assessed as average, and your diagnosis remained Anxiety (NOS).
- On 13 February 2013, you underwent the separation physical examination described above. During this examination, you reported an "excellent general overall feeling," and rated your pain severity as "0/10."
- On 20 February 2013, you had a follow-up appointment at the NHCL MHC for your diagnosed Anxiety Disorder. The therapist described you as alert, oriented, and appropriate in your interaction, and noted that you exhibited moderate psychomotor agitation with mild/moderate anxious mood. Your insight, judgment, and cognitive processes were intact. The provider again diagnosed you with Anxiety, but stated that it

¹⁹ The depression diagnosis would have been based upon the historical diagnosis made on 14 September 2012. You attributed your abdominal pains to your PTSD and/or TBI conditions, but there simply was no evidence to establish such a nexus. Your other contemporaneous records suggest that you were experiencing increased anxiety at this time due to your pending separation from the Marine Corps.

²⁰ It is not clear from the record what these limitations entailed, but the Board did not believe it likely that duty limitations related to abdominal pains which had improved over the course of a week based upon a plan including intake of milk of magnesia presented any significant question regarding your ability to continue serving in the Marine Corps.

²¹ It was not clear what these limitations entailed, as there is no other record substantiating that you were assigned to LIMDU for this reason.

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was potentially in response to your pending separation from the military. You were released without any limitations.

The Board will address each of the aforementioned criteria for mandatory MEB referral from the Navy MANMED in turn.

First, there is simply nothing in this medical history which would lead anyone, medically trained or otherwise, to believe that you met the first criteria for mandatory referral to a MEB, namely that any of your conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to your office, grade, rank or rating.²² Your TBI condition was described as “mild.” You began running again without any symptoms within three months of your TBI, and were restored to full duty with no medical limitations within four months. You consistently reported improvement in your symptoms, and described your own condition favorably during your SHPE with little or no pain. At the time of your discharge, your insight, judgment and cognitive processes were described as intact. This medical record would not likely result in the referral of any Marine to a MEB. It is unlikely that any physician would, and apparently none among the numerous different specialty clinics and primary care providers that you visited at different locations after incurring your final TBI in June 2010 did, believe that your medical conditions significantly interfered with the performance of duties appropriate to your office, grade, rank or rating. This is not surprising since, as discussed further below, you were, in fact, successfully performing duties appropriate to your office, grade, rank, or rating despite your medical conditions.

In accordance with SECNAVINST 5420.193, the Board applied the presumption of regularity to the assessments made by your numerous medical providers between your TBI in June 2010 and your discharge in April 2013. In the absence of evidence to the contrary, the Board relies upon this presumption to support the official actions of public officers and must presume that they properly discharged their official duties. You were seen by multiple professional military medical providers across a variety of medical specialties at three different medical centers or clinics during the relevant time period. All of these providers had an ethical, professional, and regulatory obligation to refer you to a MEB if they believed that your conditions appeared to significantly interfere with your performance of duties appropriate to your office, grade, rank, or rating; that your conditions would prohibit returning you to your parent command in a medically unrestricted duty status following appropriate light duty; or that your conditions may seriously compromise your health or well-being if you were to remain in the Marine Corps. Their professional reputations and credentials could be jeopardized if they failed to fulfill this obligation, yet none of them ever did. Only the Neurology professionals ever even assigned you any significant duty limitations, and those were fully lifted just four months after the June 2010 TBI incident when you were restored to full duty status. This provided compelling evidence that

²² The only potential exception to this statement that the Board found was the 4 October 2010 entry made by a civilian provider, which found significant impairment to your learning functions based upon your neuropsychological evaluation. However, you had a follow-up appointment with the NHCL Neurology Clinic just a week later, at which it was determined that your condition had improved to such a degree that you could be removed from a LIMDU status and returned to full duty with no medical limitations. This fact, along with your successful performance of duties over the next 28 months, convinced the Board that whatever impairment was identified by the civilian provider who conducted this neuropsychological evaluation did not raise questions about your ability to continue serving.

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your conditions never warranted referral to a MEB at any time prior to your discharge from the Marine Corps. Unfortunately, you did not provide sufficient evidence to overcome this presumption.

In this regard, the Board carefully reviewed and considered the psychiatric assessment provided by Dr. Blumenfield, with an eye toward determining whether all of your military providers may have simply missed the signs that referral to an MEB was warranted. Unfortunately, while the Board did not doubt Dr. Blumenfield's credentials or qualifications, it did not find his report to be particularly persuasive. While he confirmed your diagnoses of PTSD and TBI, with symptoms both at the time of and since your discharge (which were not in question), he provided nothing to support his conclusion that your conditions interfered with your ability to perform duties appropriate to your office, grade, rank or rating. In fact, in concluding that "it is clearly documented that after [your] injury in 2010 through the time period in which [you] were discharged, [you] would not have been able to fulfill the duties as a rifleman in the Marine Corps" and that "if a full medical board had been convened and given the clinical facts documented in [your] record ... they would have found that [you were] not fit for duty as a rifleman in the Marine Corps," he apparently did not review any contemporaneous records describing your performance of duties during the period in question. Rather, he claimed to have reviewed only the medical records and a 25-page summary of the records which were provided to him (which the Board also reviewed and included in the summary above), which as stated above clearly do not support these conclusions. His conclusions in this regard were not explained or supported by any analysis. Quite frankly, it was not even clear to the Board that he knew the duties of a Marine rifleman or understood and applied the standard for a finding of medical unfitness in making these conclusions. By contrast, the numerous medical providers who observed, treated, and assessed you during the relevant period in question, had the professional, ethical, and regulatory obligations discussed above. They also had military backgrounds not apparent from Dr. Blumenfield's report, which would make their opinions more credible than his in this regard. Finally, unlike Dr. Blumenfield, they did not have any personal financial incentive to reach a particular result in their treatment and assessments of your medical conditions, other than to ensure that they applied their best medical judgment in your own best interest so that their reputations and credentials would not be jeopardized. As such, the Board found the fact that these multiple military medical providers never referred to you a MEB, or even imposed significant duty limitations, to be significantly more probative of the effects of your medical condition upon your ability to perform your duties during the period in question than the opinion offered by Dr. Blumenfield almost five years after your discharge without the benefit of any direct observation of you during the relevant time frame.

Likewise, the Board also did not find the results of Dr. Vogel's examination to be particularly persuasive in this regard. Again, the Board did not doubt or question Dr. Vogel's competency and credentials. Rather, it simply recognized a VA Compensation and Pension (C&P) examination for what it actually is. The C&P examination, from which Dr. Vogel's report arose, is intended assess the validity of the conditions for which you claimed service-connected disability benefits, and to document the effect of those conditions for the purpose of assigning disability ratings to those service-connected conditions upon which disability compensation is based. Dr. Vogel had no professional obligation to provide an accurate assessment of your condition and its effects, as he did not evaluate you for treatment purposes. Further, contrary to

your contention, C&P examinations are not thorough. His assessment of the effects of your conditions in this regard was informed solely based upon your own self report which, as evidenced by the objective evidence in the record, was not consistent with what you were reporting to providers who had an obligation to professionally treat your conditions or with your duty performance at FMTB-E. Unfortunately, his conclusions in this regard were not supported by the objective evidence regarding your performance. Dr. Vogel reported that you suffered numerous functional impairments resulting from your TBI and/or PTSD conditions, but for every impairment that he noted there was objective evidence that such impairments were not nearly as debilitating as he reported them to be and/or that they did not impede your performance of duties. For example, he reported that you usually get “lost in unfamiliar surroundings, [have] difficulty reading maps, following directions and judging distances,” but your FITREPs reflect that you successfully trained thousands of Navy Medical Department and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps, which specifically included land navigation skills. He reported cognitive function deficits affecting your memory and difficulty learning new material, planning and organizing, and maintaining attention or concentration on a task, but you were lauded during the period in question specifically for your maintaining “flawless accountability of personnel, weapons, and equipment for [your] platoons,” for your “leadership, professional knowledge, and *meticulous attention to detail* [which] earned [you] the respect and admiration of students and staff (*emphasis added*),” and for developing “field exercises that more accurately represent current tactics, techniques, and procedures currently being experienced in current operational theaters.” He reported that you experienced difficulty in communicating with others, but you somehow effectively trained thousands of Navy Medical Department and Religious Program personnel to successfully serve with and support Marine Corps operational units. Again, the Board did not doubt Dr. Vogel’s credentials, and certainly does not question the current severity of your conditions or that you deserve the disability compensation that you currently receive for your injuries suffered in service to the nation. Rather, it simply did not assign significant weight to his conclusions regarding your functional impairments at the time, as they were not based upon any direct observation of your performance or supported by the objective evidence detailing your performance and capabilities during the relevant period in question. As such, the Board found that the evidence you provided did not overcome the presumption of regularity assigned to the judgment of the numerous military medical providers who treated and assessed your medical conditions during the period in question, none of whom believed that they warranted referral to a MEB.

The Board noted your claim that you were advised to seek separation through the VSP as you would not be able to continue in service due to your medical diagnosis, but even if you were so advised the Board did not find this to be persuasive evidence that your continued service was actually in any doubt. This advice did not come from any medical providers, and it is their assessment which is relevant to a MEB referral. Further, your medical diagnosis had not impaired your continued service without any medical limitations, or even required any significant medical attention, for two years prior to your VSP request, and there was nothing in your medical records which raised any questions regarding your continued service in the Marine Corps. Further, you requested VSP just four days after the program was announced offering separation pay to active component Marine staff sergeants with between six and 20 years of

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service,²³ which raised doubts regarding your claimed motivation for the request.²⁴ Finally, your reenlistment code upon your discharge pursuant to the VSP was “RE-1A,” suggesting that the Marine Corps saw no medical impediment to your continued service, either at the time of your discharge or in the future if you sought to reenlist.

In addition to finding that no medical provider would reasonably have believed that your medical conditions significantly interfered with your performance of duties appropriate to your office, grade, rank or rating, the Board also found that your conditions clearly did not prohibited your return to your parent command in a medically unrestricted duty status following appropriate light duty. As discussed above, you were, in fact, returned to your parent command in a medically unrestricted duty status after just four months of light duty following your TBI incident. Your assignment to a non-operational training billet upon your restoration to full duty status was not based upon any medical limitations, as none were assigned. Rather, in the absence of any medical restrictions, the Board found this particular assignment to be a command decision, likely based upon the needs of the Marine Corps and/or a desire to provide you the well-deserve opportunity to “take a knee” after your multiple combat deployments. Accordingly, the evidence also did not support the second mandatory basis for an MEB referral according to the Navy MANMED.

Finally, there simply was no evidence to support a belief that your conditions would seriously compromise your health or well-being if you were to remain in the Marine Corps. After being removed from LIMDU status in October 2010, you had only two medical encounters related to your TBI and PTSD conditions over the next two years, and you were returned to duty with no medical restrictions on each occasion. As such, your conditions clearly did not require close medical supervision or hospitalization. Further, the decision to terminate your service in the Marine Corps was yours. Your Marine Corps career ended because you elected to participate in the VSP program, and not based upon any limitations imposed by your medical conditions. Based upon your record and the fact that you were operating successfully over an extended period with no medical limitations, the Board believed that you could have continued serving successfully if you had chosen to reenlist. If, in fact, your conditions would have impaired your ability to serve elsewhere as an Infantry Unit Leader, you deprived yourself and therefore this Board of such evidence by voluntarily ending your service before such a result was manifested. Accordingly, you did not satisfy the third mandatory basis for an MEB referral according to the Navy MANMED.

The Board found that no Marine with your medical record would reasonably have expected to be referred to a MEB. While there is no doubt that you exhibited symptoms of PTSD and TBI during your last several years of service, you simply did not meet the criteria for such a referral at any time prior to your discharge. Even if your conditions did warrant referral to a MEB, however, the Board found it to be highly likely that your condition would have warranted referral to a PEB, and even less likely that the PEB would have made a finding of unfitness. Per SECNAVINST 1850.4E, an active duty member will be referred to the PEB for a disability evaluation only when the MEB finds that the member’s fitness for continued naval service is

²³ MARADMIN 544/12 was published on 29 September 2012. You applied for VSP four days later.

²⁴ You received \$106,956.18 in separation pay pursuant to the VSP. After taxes, this amounted to \$80,217.14.

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questionable by reason of physical or mental impairment.²⁵ A MEB would have reviewed the same medical evidence discussed above, absent the C&P Examination from Dr. Vogel which would not have been produced if you were not pending separation and the report provided by Dr. Blumenfield which was produced five years after the fact to support your current request. This medical evidence would have led the MEB to the same conclusion reached by this Board that there was no real question regarding your fitness for continued service prior to your discharge. You were restored to full duty in October 2010, and operated successfully without any limitations in your rating for the remainder of your career and with virtually no medical oversight. There was simply no basis upon which a hypothetical MEB would have referred you to the PEB for a disability determination. In this regard, the Board noted that SECNAVINST 1850.4E provides that members being processed for separation for reasons other than physical disability are not to be referred to the PEB for a disability evaluation, unless the member was previously found unfit but retained on active duty in a permanent LIMDU status or the member's physical condition reasonably prompts doubt that he is fit to continue to perform the duties of his office, grade, rank, or rating.²⁶ You requested voluntary separation under the VLP in October 2012 and your request was subsequently approved, so your referral to the MEB would have been precluded after October 2012 unless you had not been medically cleared for separation.²⁷ As discussed further below, the Board did not concur with your claim that your SHPE which medically cleared you for separation was defective. Considering that your medical conditions prior to that date did not warrant more than four months of LIMDU before you were restored to full duty with no medical limitations and that you had virtually no medical encounters related to your PTSD and TBI conditions thereafter, there simply never was a time during your Marine Corps service when your medical conditions would lead anyone to reasonably believe that your fitness for continued service was questionable.

Finally, even if a PEB was warranted in your case, the evidence is even more convincing that you would have been found fit for continued service, and therefore not entitled to a medical retirement. As you noted, the sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay.²⁸ In assessing your fitness on this basis, the PEB would have reviewed the same medical record referenced and summarized above in conducting its fitness assessment, which as stated previously does not support your contention that you were unfit to perform the duties of your office, grade, rank, or rating. Again, Dr. Vogel's examination would not have factored into this analysis, as a C&P Examination would not have occurred if you were not pending separation and therefore submitted a claim for disability benefits, and Dr. Blumenfield's analysis would not have been available since it was obtained five years after the fact to support your current request for relief. As stated previously, there was nothing in your medical record that would convince anyone, medically trained or otherwise, that any of your conditions, either individually or collectively, significantly interfered with the performance of duties appropriate to your office, grade, rank, or rating. As this evidence did not support a conclusion that your medical

²⁵ See paragraph 3201a.

²⁶ See paragraph 3202g.

²⁷ The Board acknowledged your claim that you were erroneously approved for participation in the VSP, but found no merit in your argument because, as stated above, there simply was no basis for referring your case to the DES.

²⁸ See SECNAVINST 1850.4E, paragraph 3301.

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conditions significantly interfered with the performance of duties appropriate to your office, grade, rank, or rating, it certainly would not have supported the conclusion that you were reasonably unable to such duties as a result of those conditions necessary for a finding of unfitness.

The Board acknowledged the affidavits provided by you and your spouse with your original application. Specifically, your spouse declared that your condition was bad enough at the end of your enlistment that your superiors told her that she “should keep all weapons and knives locked away in the home” and that she “should sleep with [your] son, separately from [you], in a locked bedroom in order to prevent any possible violence.” Even assuming this declaration to be true, it does not reflect upon your ability to perform the duties of your office, grade, rank, or rating. Rather, it would reflect a belief regarding the advancement of your conditions which was not supported by any of the other objective medical or non-medical evidence, or even by the actions of these superiors. The only provider to whom you ever reported any symptoms resembling these was Dr. Vogel in support of your claim for disability benefits. Further, this reported observation of the severity of your condition was not corroborated by any of those who reportedly held these fears, or even by your spouse who made the declaration, as she only reported what others allegedly told her without reporting any of her own observations which might support the belief. The fact that you never sought treatment for whatever symptoms would have aroused such fears in your superiors, and that those superiors never took any action to protect you or your students (or themselves professionally) from such behavior other than to reportedly advise your wife to lock up the weapons and sleep in a separate room, raised doubts regarding the validity of this claim. Additionally, you asserted that you experienced several bouts of vomiting and severe abdominal pain while assigned as an instructor at FMTB-E, and that at times your symptoms were so severe that your colleagues had to take over your classes. As noted above, the Board did not find evidence that these symptoms were related to your PTSD and/or TBI conditions, as you did not seek treatment for them until more than two years after you were removed from LIMDU status and restored to full duty without any limitations. In any case, you reported improvement in these symptoms just a week after being seen in the ER and beginning a treatment regimen. Finally, you declared that you were warned about your erratic behavior and overly harsh discipline of trainees under your supervision while on the rifle range while assigned to FMTB-E, and that your colleagues and superiors indicated to you that they were concerned that your conduct was becoming increasingly erratic over time. Considering that your colleagues and superiors never took any action to protect you or the students, however, this assertion did not provide the Board with a sufficient basis to conclude that you were unable to perform the duties of your office, grade, rank, or rating. A single incident of overly harsh discipline by a Marine noncommissioned officer would not raise legitimate questions regarding the Marine’s fitness for duty; it would be difficult to fill the Marine Corps if it did.

In addition to the medical evidence which would not have supported a conclusion that you were medically unfit for continued service in the Marine Corps, a PEB would also have considered non-medical evidence of your capabilities. This evidence conclusively demonstrated that you were fully able to perform the duties of your office, grade, rank, or rating despite your medical conditions. The most compelling evidence that you were fully capable of performing the duties of your office, grade, rank, or rating was that you were, in fact, capably performing the duties of your office, grade, rank, or rating as an Instructor at FMTB-E. The Board did not concur with

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you assertion that this billet was not in your rating. While this was a non-operational training billet, it was not, contrary to your contention, outside of your rating. As you know, not all Infantry Unit Leader billets are in operational Marine Corps combat units. The billet MOS for this position is coded for an Infantry Unit Leader (MOS 0369), as reflected on your FITREPs,²⁹ which is understandable since Marines with your rating would obviously be the most qualified to perform the duties associated with this billet.³⁰

Even if the Board is mistaken in its conclusion that the FMTB-E Instructor billet was coded for MOS 0369 (Infantry Unit Leader), the duties that you performed in this billet were substantially the same as you would have been performing as an Infantry Unit Leader assigned to an operational Marine combat unit in a garrison environment,³¹ which, despite the pattern of repeated deployments reflected in your own career, is the default status for Marines most of the time. As you stated, the Marine Corps Infantry Training and Readiness Manual requires that for every billet coded for an Infantry Unit Leader, the Marine must “maintain the capabilities of core and core plus skills for a 0300 Basic Infantry Marine.” While assigned as an Instructor at FMTB-E, you performed first-class physical and combat fitness tests; instructed and maintained marksmanship with the M9 service pistol and the M4 carbine; and instructed personnel on land navigation, offensive and defensive attacks, and ambushes. The Board also found the duties described for this billet in your FITREPs to be remarkably similar to the Infantry Unit Leader requirements that you quoted from the Marine Corps MOS Manual. The only appreciable difference between your duties as a FMTB-E Instructor and those you would have had if assigned to a operational Marine Corps unit in garrison that the Board could identify was in the

²⁹ The billet MOS in block 1h of three of the four FITREPs that you received while assigned as an Instructor at FMTB-E was stated as 0369 (Infantry Unit Leader), which was the same as your primary MOS. The outlier FITREP, which was the second that you received in this billet for the reporting period 1 January 2011 to 31 December 2011, listed the billet MOS as 3529 (Motor Transport Maintenance Chief). The Board found this outlier to be a clear clerical error, as the duties you were performing in this capacity were completely unrelated to the duties of a Motor Transport Maintenance Chief and ideally suited for an Infantry Unit Leader and a random deviation from the billet MOS listed on both the preceding and two succeeding FITREPs. The Board noted your assertion that your MCTFS Basic Individual Record originally listed this billet as MOS Code 3529 (Motor Transport Maintenance Chief), but found this to be an obvious clerical error likely resulting from the above referenced clerical error on your second FITREP in this position.

³⁰ The Board was at a loss to identify another Marine Corps rating more appropriate for the training of Navy Petty Officers (i.e., fellow noncommissioned officer) in combat leadership, which was one of the stated duties of this billet reflected in your FITREPs.

³¹ According to your FITREPs in this billet, your duties were as follows:

- To train Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps;
- Instructs, develops, and evaluates Navy Petty Officers in combat leadership;
- Coordinates and executes a progressive physical fitness program for Navy students;
- Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel;
- Establishes and updates lesson plans and supporting material;
- Familiarizes students in handling and maintenance of the M9 service pistol and the M4 rifle as well as developing their marksmanship;
- Responsible for instructing and supervising close order drill;
- Active member of Students Performance, Academic, and Disciplinary Review Boards; and
- Responsible for accountability, good order and discipline, and morale of personnel.

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responsibilities, qualifications, and uniforms worn by the Service members operating under your supervision at FMTB-E and the uniform worn by the officer to whom you reported. If you were capable of successfully training inexperienced Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills, and abilities necessary to serve with and support Marine Corps units, you were certainly capable of doing the same for actual Marines. As such, your favorable ratings and evaluations in this capacity conclusively demonstrated that you were capable of performing the duties of your office, grade, rank, or rating despite your medical conditions.³² In fact, you performed these duties so capably that you were consistently rated above your peers in this regard. In your 2012 FITREP, you were described as “[a]n outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailors and Marines at FMTB-East. His performance has had force-wide impact and significantly enhanced the quality, character, capabilities, and attitude of thousands for Hospital Corpsmen, Religious Program Specialists, Chaplains, and Navy Medical Department Officers, now serving with the Marine Corps operating forces world-wide.” This does not describe a Marine who was incapable of performing the duties of his office, grade, rank, or rating. Finally, at the very least, your ability to effectively perform your duties at FMTB-E reflected that your physical and mental capacity was not nearly as diminished as you claim them to be, or as Dr. Vogel reported them to be in his VA C&P Examination Report, which severely undermined your argument for unfitness.

Besides the fact that your favorably assessed performance as an Instructor at FMTB-E conclusively demonstrated that you were fully capable of performing the duties of your office, grade, rank, or rating, there were several other factors that would have led the PEB to this conclusion. Specifically, SECNAVINST 1850.4E provides that the inability to perform the duties of your office, grade, rank, or rating in every geographic location and under every conceivable circumstances will *not* be the sole basis for a finding of unfitness.³³ Your argument that you were unfit for continued service as an Infantry Unit Leader hinged upon the findings made by Dr. Vogel in your VA C&P Examination regarding the functional impairments resulting from your PTSD and/or TBI conditions, which you assert would have impeded your ability to perform the functions of an Infantry Unit Leader in combat. Setting aside the fact that your successful performance of duties as an Instructor at FMTB-E over a significant period of time severely undermined Dr. Vogel’s conclusions in this regard and the inherent unreliability and irrelevance of a VA C&P examination toward fitness determinations in general, an inability to perform these functions in combat could not serve as the PEB’s sole basis for a finding of

³² In this regard, the Board found your argument that these FITREP actually reflected a mediocre performance to be unpersuasive. The Board members review many FITREPs in the performance of this duty, and yours were not mediocre. In fact, they were generally better or on par with those which you received as an E-5. These FITREPs would not have prevented you from being promoted if you had decided to reenlist. The Board did not find credible your claim that you requested participation in the VSP only because of the lack of opportunity to earn a promotion in your current status, as you had not been denied promotion and, if anything in your record was going to impede your promotion opportunities, it was the non-judicial punishment you received for violating regulations pertaining to the use of a government vehicle and making a false official statement with regard to that use; the adverse counseling statement regarding a previous misuse of a government vehicle; and two adverse FITREPs from the 2006-2007 timeframe. Although you had promoted to E-6 subsequent to these adverse actions, it would have been this adverse information, and not your performance of duties at FMTB-E, which would have impeded an potential promotion opportunities.

³³ See paragraph 3307a.

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unfitness. As you offered no other arguments for your unfitness, there simply would be no basis for such a finding to be made.

While it is unlikely that a PEB would have any doubt regarding your fitness for continued service based upon this evidence alone, if any such doubt did exist it would have been resolved in favor of a finding of fitness. Per SECNAVINST 1850.4E, the benefit of any unresolved doubt regarding a member's fitness shall be resolved in favor of the fitness of the service member under the rebuttal presumption that the member desires to be found fit.³⁴ Although there is no direct evidence of your desires with regard to a PEB which never occurred, the circumstantial evidence in the record strongly suggests that that would have been your desire at the time. Specifically, the record reflects that you proactively sought to be restored to full duty in October 2010 for fear of being uncompetitive for further promotion. Further, Dr. Blumenfield quoted you as stating your belief that "if you are a Marine in the infantry you do not ask for a medical retirement." Your words and actions are those of a Marine who desired to be found fit for duty, so it is unlikely that you would have been able to effectively rebut this presumption to prove otherwise.

You noted in your application that DODI 1332.38 provided three criteria for consideration by the PEB in evaluation fitness for further service.³⁵ For the reasons previously stated, each of these criterion would have weighed significantly in favor of a finding of fitness.³⁶

The Board also continued to find the results of your SHPE to be persuasive evidence of your medical fitness at the time of your discharge. Per DODI 6040.46,³⁷ the purpose of the SHPE is to ensure that the separating Marine is medically qualified for separation. It further provides that "[i]f a condition is detected at the time of the [SHPE] that would prevent a Service member from performing further duty if he or she were not separating, then the Service member will be referred for further evaluation and potential referral to the [Disability Evaluation System (DES)] or [Integrated DES]."³⁸ The Navy MANMED specifically provides that "the standard for being medically qualified for separation is the same as that for being medically qualified for retention

³⁴ See paragraph 3306a.

³⁵ Specifically, paragraph E3.P3.2.2. provides that the PEB may consider the following criteria in its assessment of a service member's fitness for continued service: (1) The medical condition represents a decided medical risk to the health of the member or to the welfare of other member were the member to continue on active duty; (2) The medical condition imposes unreasonable requirements on the military to maintain or protect the member; and (3) The Service member's established duties during any remaining period of reserve obligation [would be negatively impacted by the condition].

³⁶ The fact that you effectively served for more than two years following your removal from LIMDU status and restoration to full duty with no medical restrictions, and that you required only minimal medical attention during that extended period, suggests that there was not a decided medical risk to your health if you were to remain on active duty, and demonstrates that your medical condition did not impose unreasonable requirements upon the military to maintain or protect you. Further, as stated in the AO provided by the Board's Physician Advisor, there "was no indication in [your] clinical or military service records of inappropriate or dangerous situations arising from [your] condition, nor indication of impairment to [your] execution of [your] assigned duties."

³⁷ *The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program*, 14 April 2016

³⁸ See paragraph 3.1.d.

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on active duty Service.”³⁹ Accordingly, the SHPE was the most reliable, relevant, and timely evaluation of your fitness for continued service as of the date of your discharge. As such, the fact that you were found medically qualified for separation and not referred to the DES was compelling, if not convincing evidence, that you were medically fit for continued service at that time. In this regard, the Board applied the presumption of regularity to the conduct of this SHPE, and found it to be more reliable and credible than the assessments provided by Drs. Blumenfield and Vogel for the same reasons previously stated that the Board found the other medical evidence in your records to be more credible.

The Board noted your argument that this SHPE was not conducted in accordance with policy guidance pertaining to such examinations in effect at the time, but could find no evidence to support this contention. Specifically, you asserted that it did not comply with policy guidance in effect stating that SHPEs will, at a minimum, “include ... a review of the individual medical history and medial record ... [*ana*] any indicated specialty consultations... (*emphasis added*),” and that the physician who conducted your SHPE failed to wait for the results of the neurology consultation for which he referred to.⁴⁰ However, the Board noted that there was no indication in your medical records that you ever followed-up on this referral. Your medical clearance would no doubt have been revoked if such consultation revealed anything that would have made you medically unqualified for separation, but you cannot legitimately claim an error in the failure of the provider to consider the results of a consult that you neglected to pursue. There was also no error in failing to consider Dr. Vogel’s evaluation as part of the SHPE examination. You claimed that that such consideration was required by Department of Defense policy, but the Board is not aware of and you provided no citation to any such policy. As VA C&P Examination quite frequently do not occur until long after a Service member has departed the service, the Board doubted the existence of any such requirement. Finally, you claimed that the SHPE notes symptoms inconsistent with the finding that you were fit to separate. However, you reported during the SHPE an “excellent general overall feeling,” and rated your pain severity as “0/10.” Again, you cannot legitimately claim that the provider who conducted your SHPE failed to conduct an adequate examination if you failed to inform him of the severity of your symptoms that you now claim and led him to believe otherwise. As the only time you ever reported such severity in your symptoms was in your effort to obtain the highest possible disability rating for compensation purposes, and your claims in this regard are not supported by either the objective medical evidence pertaining to your conditions or the non-medical evidence regarding your capabilities, the Board could not help but doubt that your conditions were actually as severe at the time as you now claim them to be.

The final factor upon which the Board rendered its conclusion that the evidence does not support a finding that you were medically unfit at the time of your discharge is your own words. You acknowledged in your original application to this Board that it was difficult for you to document your unfitting medical conditions. Although you made this observation in the context of describing the consequences of the failure to refer you to the MEB, the burden to provide such documentation and to prove that your medical conditions were unfitting remains with you. If it was difficult for you to provide evidence establishing your unfitting condition, it was even more

³⁹ See Article 15-20 (Separation from Active Duty).

⁴⁰ Although you did not cite the Navy MANMED as the source of this requirement, the Board did not that this requirement does not appear among the SHPE requirements in the MANMED.

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difficult for this Board to find sufficient evidence to establish it. As you essentially acknowledged, you simply did not provide this Board with sufficient evidence to make that case. Accordingly, the Board strongly agreed with the AOs provided by both the CORB's Senior Medical Advisor and the Board's own Physician Advisor that a hypothetical PEB almost certainly would have found you fit for continued service.

In conclusion, the Board recognized that you did suffer from PTSD and TBI during your active duty service in the Marine Corps, and that you manifested symptoms of these conditions prior to your discharge. However, the existence of such conditions and the manifestations of such symptoms does not, by itself, establish that you were unfit for continued service and therefore entitled to a medical retirement. The evidence simply does not support your contention that you were reasonably unable to perform the duties of your office, grade, rank, or rating as a result of those conditions. There was nothing in your medical records which would have or should have prompted any military health care provider to refer you to a MEB, and, contrary to your contention, you were, in fact, effectively performing the duties of your office, grade, rank, or rating. In fact, you were performing such duties at a relatively high level despite your medical conditions. As stated previously, the Board sincerely regrets that it is unable to grant you the relief that you seek given your valorous combat record and the sacrifices that you have clearly made in service to the Nation. However, the preponderance of the evidence simply does not support your contention that there was any error or injustice in the failure to refer you to a MEB, or in the fact that you were not granted a medical retirement.

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,

5/5/2023

X 

ELIZABETH A. HILL

Executive Director

Signed by: HILLELIZABETH.ANNE.1106915438

RECORDER'S LOG

BOARD MEMBERS:	BOARD DATE: 30 MAR 23
Mr. Oltman – Board Chair	RECORDER: Ms. Ritchie
Mr. Martin	EXAMINER: Ms. Sloane
Mr. Mannix	

	Last Name, First Name, MI	Docket No.	Grant	Deny Merit	Deny Statute	PA Req*	Comments
2	BEE_WILLIAM_O	7673-22		DDD			Concur w/AO Petitioner contentions are speculative, BMOS was 0369 prior to separation, and he was successfully carrying out his duties in that billet, no evidence that serving in instructor billet negatively impacted competitiveness for promotion. Record does not support disability retirement at time of voluntary separation: delayed effects/manifestation of PTSD/TBI does not demonstrate he was unfit at time of sep

Enter "" if hearing requested

Vote Key: **G** = Full Grant **P** = Partial Grant **D** = Deny

GRANT (Full)	1
GRANT (Partial)	0
DENY	1
TOTAL	2

3/30/2023

X Jane Ritchie

Recorder or Board Chair
Signed by: RITCHIE.JANE.D.1091936786

THIS DOCUMENT CONTAINS INFORMATION UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. IT IS BEING RELEASED FOR COURTESY OF THE JUDGE ADVOCATE GENERAL CORPS AND MAY CONTAIN INFORMATION PROTECTED BY THE PRIVACY ACT. DO NOT RELEASE WITHOUT APPROPRIATE AUTHORIZATION.

Docket No.: 7673-22

Military Status: Discharged / SSgt E6 / USMC

Personal Appearance Requested: NO **Personal Appearance Approved:** Yes/No _____

Claims of Error/Injustice/Clemency: Error and Injustice

SPECIFIC ISSUES: REMAND/Disability Retirement

Docket No 3901-18 /6 June 2019 (board) / 5 August 2019 (letter):

RECORD CHANGE REQUESTED:

- Placement on the Permanent Disability Retired List

PETITIONER CONTENTION(S):

- I was unfit for TBI, PTSD, Cognitive disorder, and post-concussive syndrome with cognitive impairment and should have been referred to the PEB.

Board Decision: Denied see bookmarked BCNR Decision NR20180003901

- a. Petitioner was responsible for his release from active duty based on his request to participate in a voluntary separation program.
 - i. No evidence that you were denied reenlistment and you were issued an unrestricted reenlistment code upon discharge.
- b. Medical cleared to separate
 - i. Medical Department Chapter 15-20 states “comprehensive evaluations are conducted for the purposes of ensuring that Service members have not developed any medical conditions while in receipt of base pay that might constitute a disability that should be processed by the PEB and to ensure Servicemembers are physically qualified for recall to additional periods of active duty. Thus, the standards for being physically qualified to separate are the same as those being qualified to continue active duty service.
- c. “Despite your arguments that you were not working in your primary MOS, the Board felt this high level of performance was not indicative of a servicemember who is unable to perform the duties of their office, grade, rank, or rating since your performance, in addition to being above at least 10 of your peers, was at or above fleet levels for your paygrade.”
- d. C&P disability ratings by VA is not sufficient evidence as disability ratings are tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.
 - i. You were able to complete first class physical and combat fitness tests from 2010 through 2012.
 - ii. Further supports the fact that the VA ratings in your case were not probative on the issue of fitness for continued naval service.

RECORD CHANGE REQUESTED:

- Placement on the Permanent Disability Retired List due to TBI and PTSD.

PETITIONER CONTENTION(S) VIA COUNSEL:

1. **Contention #1:** Petitioner was unable to perform the duties of his office, grade, rank, or rating due to debilitating symptoms from his diagnosed combat-incurred TBI and PTSD.
 - a. Courts have repeatedly found that, for the Board to evaluate a member’s fitness at the time of their discharge the Board must first make findings as to what the member’s duties

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Docket No.: 7673-22

Service Branch	Rate/Rank	Dates of Service	Characterization of Service	Separation Reason(s)	Reentry Code
USMC	SSgt/E-6	20 Jun 00-1 Apr 13	Honorable	Force Shaping – Voluntary Separation Pay Program (VSP)	RE-1A*

*RE-1A: Recommended for re-enlistment

Date	CHRONOLOGY OF RELEVANT EVENTS
20 Jun 00	Petitioner enters service with Marine Corps. His MOS is Rifleman (0311)
19 Sep 01	Petitioner deploys to Afghanistan until 20 March 2002.
23 Oct 02 20 Dec 02	Pet second deployment to Afghanistan
20 Jul 04	Petitioner assigned to Recruiting Station Pittsburgh until 1 Jul 07. MOS (8411)
11 Jan 07	Petitioner receives NJP for violations of Article 92 (Failure to Obey order/Regulation) and Article 107 (False Official Statement). Pet drove GOV vehicle to his residence and Lied to NCOIC about his whereabouts. Not recommended for promotion.
3 Jul 07	Petitioner assigned to 1stBn 6 th Marines MOS (0311) Rifleman
12 Mar 08	Petitioner 3 rd deployment to Afghanistan until 18 Oct 2008. Petitioner earns a Navy Achievement Medal with a Combat “V” for service in Operation Areda Rosa, Battle for Gasmir, and Operation Azada Wosa. Petitioner struck by rock after bullet hit rock formation. Embedded photographer caught the shot used in NY Post article. Pet medical evaluation “potential TBI with persistent symptoms” Pet not referred for additional evaluation.
15 Jul 08	FY08 SSgt Promotion Selection Board convened. <ul style="list-style-type: none"> Eligible in-zone, failed selection.
14 Jul 09	FY09 SSgt promotion selection Board convened. <ul style="list-style-type: none"> Eligible above-zone, failed selection.
16 Dec 09	Petitioner 4 th deployment to Afghanistan until 8 June 2010
8 Jun 10	Petitioner suffers a Grade 3 concussion (TBI) with loss of consciousness due to 3 IED blast when squad entered a building – 2 members of squad were killed. Pet is evacuated to Landstuhl Germany Regional Medical Center (LRMC). His next memory is “coming to in the CT scanner.” He is diagnosed with mild TBI on 14 Jun 2010. He is transferred back to CONUS after two weeks.
13 Jul 10	FY10 SSgt Promotion Selection Board convened. <ul style="list-style-type: none"> Eligible above-zone, selected and promoted w/ a 1 Oct 10 Date of Rank.
14 Jun 10	LRMC Neurology/TBI Screening: screened positive for TBI current symptoms of headache, dizziness, nausea/vomiting, dizziness, sleep disturbance and decreased concentration. Prior head injury of being knocked out when hit in head by ricochet of bullet/rock. Clinical Impression was Mild TBI/
15 Jun 10	Psychiatry Initial Examination: Petitioner endorsed insomnia, anxiety, nightmares and flashbacks. Feelings of guilt as he lost Marines under his command as troop leader. Diagnosed with Acute Stress Disorder and prescribed Seroquel for anxiety, insomnia, and nightmares. Patient to return to CONUS for further psychiatric treatment. He was doing better with medications helping sleep.
21 Jun 10	Petitioner is placed on limited duty for his TBI through 20 Dec 2010.
1 Oct 10	Petitioner was promoted to Staff Sergeant (E6) – PMOS is 0369.
4 Oct 10	Neuropsych Eval: Diagnosed Petitioner with Cognitive Disorder, not Otherwise Specified (NOS) and PTSD, Chronic, Moderate with current Global Assessment of Function of 40-45 (Serious Impairment in occupational, Social, School Function). Mild

AR0494

From: Ashley.Gebicke@lw.com
To: [BCNR APPLICATION](#)
Cc: Darryl.Steensma@lw.com; Kyle.Jefcoat@lw.com; Ryan.Giannetti@lw.com; Chantel.Christian@lw.com; esther@nvlsp.org; david@nvlsp.org; rochelle@nvlsp.org
Subject: [Non-DoD Source] Docket No. 7673-22 Advisory Opinion Response Letter
Date: Thursday, March 16, 2023 11:36:50
Attachments: [Bee-Response to Advisory Opinion 03.16.2023.pdf](#)
[NR20220007673_30 DAY LETTER ADVISORY OPINION_Redacted.pdf](#)

Hello,

Please find attached former USMC Staff Sergeant William O. Bee's response letter to the attached letter dated February 20, 2023, and the enclosed Advisory Opinion dated February 18, 2023. Please let me know if there is any other information I can provide.

Best regards,

Ashley Gebicke

LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Direct Dial: +1.858.523.3938
Email: ashley.gebicke@lw.com
<https://www.lw.com>

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DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No: NR20220007673

Ref: Signature Date

From: Dr. Robert A. Alonso, M.D., Physician Advisor, Board for Correction of Naval Records
To: Chairman, Board for Correction of Naval Records

Subj: ADVISORY OPINION ICO FORMER MEMBER WILLIAM O. BEE, USMC

Ref: (a) RJO Docket No. 7673-22 dtd 18 Jan 2023
(b) 10 U.S.C. 1552
(c) 38 CFR PART 4 (Veterans Administration Schedule for Rating Disabilities (VASRD))

1. Reference (a) requests comments and a recommendation to Petitioner's application to the Board for Correction of Naval Records (BCNR) requesting, in enclosure (1), to be placed on the disability retirement list. The United States Court of Federal Claims in enclosure (1) directs the Board for Correction of Naval Records (Board) to reconsider, among other issues, Petitioner's claims for permanent disability retired pay pursuant to reference (b) or temporary disability retired pay pursuant to reference (c), and, as a result of that reconsideration, correct any errors in or remove any injustices from Petitioner's record, as appropriate. Petitioner is specifically requesting his record reflect he was transferred to the Permanent Disability Retired List due to his traumatic brain injury (TBI) and Post-Traumatic Stress Disorder (PTSD) sustained while on active duty, as well as a corresponding correction of his military records regarding the nature of his injuries at the time of his separation from the Marine Corps. In response, documents contained in reference (a) were reviewed in accordance with references (b-c).

2. I have reviewed the available records and will comment on the medical issues of the Petition. After consideration, it has been determined the available evidence provides insufficient support for the request.

3. The above determination was due to a preponderance of the evidence. Pertinent evidence included the following:

The Petitioner served in the Marines from June 2000 to April 2013 and was discharged for FORCE SHAPING-VSP with an Honorable Discharge. Petitioner rose to the rank of Staff Sergeant (SSgt-E6) with Primary Operational Specialties of Infantry Unit Leader (0369), Rifleman (0311), and Recruiter (8411). During the course of his career, he executed four deployments in support of combat operations (20010919-20020320) OEF Afghanistan; (20011123-20020220) Operation Swift Freedom, Pakistan/Afghanistan; (20080312-20081018) OEF, Afghanistan; (20091216-20100607) OEF 09; and (20100608-20100611) OEF 09 WIA Grade 2 Concussion (Medevac to Germany and CONUS).

Petitioner received personal and unit awards to include Navy and Marine Corps Achievement Medal (w/Combat "V") (2), Purple Heart Medal, Afghanistan Campaign Medal (w/4 stars), Global War on Terrorism Expeditionary (Enduring Freedom) and Service Medals, Combat Action Ribbon (Enduring Freedom), Presidential Unit Citation-Navy, Navy Unit

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES THIS IS AN IMPORTANT RECORD SAFEGUARD IT ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

This Report Contains Information Subject to the Privacy Act of 1974 As Amended.

1. NAME (Last, First, Middle) BEE, WILLIAM OLAS		2. DEPARTMENT, COMPONENT AND BRANCH USMC-1		3. SOCIAL SECURITY NUMBER [REDACTED]	
4a. GRADE, RATE OR RANK SSGT	b. PAY GRADE E5	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000		
7a. PLACE OF ENTRY INTO ACTIVE DUTY CLEVELAND, OHIO 44147		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) WOOSTER, OH			
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND FLC MED TRNG BN EAST (PERA PERS) CAMP JOHNSON NC			b. STATION WHERE SEPARATED MCCSSS TRNG CMD CAMP LEJEUNE NC 28542		
9. COMMAND TO WHICH TRANSFERRED CMC (MMSN-20) RUC 54882			10. SGLI COVERAGE AMOUNT: \$ 400,000		NONE
11. PRIMARY SPECIALTY (Last number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 0369, INFANTRY UNIT LEADER, 02 YEARS, 06 MONTHS 0311, RIFLEMAN, 09 YEARS, 11 MONTHS 0411, RECRUITER, 05 YEARS, 00 MONTHS		12. RECORD OF SERVICE			
		a. DATE ENTERED AC THIS PERIOD	2009	06	20
		b. SEPARATION DATE THIS PERIOD	2013	04	01
		c. NET ACTIVE SERVICE THIS PERIOD	12	09	12
		d. TOTAL PRIOR ACTIVE SERVICE	00	00	00
		e. TOTAL PRIOR INACTIVE SERVICE	00	00	00
		f. FOREIGN SERVICE	00	00	00
		g. SEA SERVICE	00	00	00
		h. INITIAL ENTRY TRAINING	00	00	00
		i. EFFECTIVE DATE OF PAY GRADE	2010	10	01
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) NAVY AND MARINE CORPS ACHIEVEMENT MEDAL (W/COMBAT 'V') (2) COMBAT ACTION RIBBON (ENDURING FREEDOM) PRESIDENTIAL UNIT CITATION-NAVY NAVY UNIT COMMENDATION(3) NAVY MERITORIOUS UNIT COMMENDATION(2) MARINE CORPS GOOD CONDUCT MEDAL(4)		14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) FORMAL SCHOOL INSTRUCTOR (YHU), 2 WKS, 11/2011 BASIC INSTRUCTOR COURSE (BIC) (XRO), 4 WKS, 04/2011 RECRUITERS SCHOOL (RCL), 7 WKS, 14/2004 INFANTRY RIFLEMAN (R1), 8 WKS, 04/2000			
15a. COMMISSIONED THROUGH SERVICE ACADEMY		YES	X	NO	
b. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Sec 2107b)		YES	X	NO	
c. ENLISTED UNDER LOAN REPAYMENT PROGRAM (10 USC Chap 169, 16 yes, years of commitment)		YES	X	NO	
16. DAYS ACCRUED LEAVE PAID 23.6	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 60 DAYS PRIOR TO SEPARATION			YES	NO
18. REMARKS SERIAL # 2716370 ITEM NO. 13 CONT ARMED FORCES EXPEDITIONARY MEDAL (ENDURING FREEDOM) AFGHANISTAN CAMPAIGN MEDAL (W/4 STARS) GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL (ENDURING FREEDOM) GLOBAL WAR ON TERRORISM SERVICE MEDAL CONTINUED ON CONTINUATION SHEET <small>The information contained here is subject to computer matching with the Department of Defense or with any other affected Federal or non-Federal agency, for verification purposes and to determine eligibility for, and/or compliance with, the requirements of a Federal benefit program.</small>					
19a. MAILING ADDRESS AFTER SEPARATION (include ZIP Code) 324 KINGSTON RD, JACKSONVILLE, NC, 285460000			b. NEAREST RELATIVE (Name and address - include Zip Code!) BOBBIE J BEE (SPOUSE), 304 KINGSTON ROAD, JACKSONVILLE NC 28546		
20. MEMBER REQUESTS COPY 8 BE SENT TO (Specify area/locality): NC		OFFICE OF VETERANS AFFAIRS	X	YES	NO
a. MEMBER REQUESTS COPY 3 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (WASHINGTON, DC)		X	YES	NO	
21a. MEMBER SIGNATURE 	b. DATE (YYYYMMDD) 20130227	22a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade (for signature)) M P MAJOR 66 PERSONNEL CHIEF		b. DATE (YYYYMMDD) 20130227	
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)					
23. TYPE OF SEPARATION DISCHARGED		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE			
25. SEPARATION AUTHORITY MARCORSEPMAN 1307		26. SEPARATION CODE MCN1	27. REENTRY CODE RE-1A		
28. NARRATIVE REASON FOR SEPARATION FORCE SHAPING-VSP					
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE			30. MEMBER REQUESTS COPY 4 (In/Out) WAS		

DD FORM 214, AUG 2009 PREVIOUS EDITION IS OBSOLETE SERVICE - 8
Access Designer 8.0

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Case 1:21-cv-01970-LAS Document 46-3 Filed 08/18/23 Page 100 of 251
Case 1:24-cv-01679-LAS Document 7-5 Filed 11/30/21 Page 63 of 99

0703741551
2-14-99 15117

HQMC YCRK

07/15/99 00:45 P.00/000
1382 760 3474



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
3200 E STREET NW
WASHINGTON DC 20372-6005

IN REPLY REFER TO

940 4
6110/252
25/ME/991877E
13 Sep 1995

From: Chief, Bureau of Medicine and Surgery
To: Commanding General, Marine Corps Recruiting Command
Subj: PHYSICAL QUALIFICATION FOR ENLISTMENT IN THE UNITED STATES
MARINE CORPS ICO WILLIAM RFE, [REDACTED]

Ref: (a) BUMED ltr 611025/ME/9915318 dtd 29 July 99

Encl: (1) Clinical data on applicant

1. Enclosure (1) is forwarded/returned.
2. Based on a review of available medical information, subject applicant DOES NOT meet established physical standards due to attention deficit disorder.
3. A waiver of the physical standards IS recommended.
4. This recommendation supersedes the recommendation made in reference (a).

L. K. Grubb

L. K. GRUBB
By direction

RE 42
14 Sep 99

From: Commanding General, Marine Corps Recruiting Command
To: Commanding Officer, Marine Corps Recruiting Station, Cleveland
1. Medical waiver is approved for enlistment and shipping.
2. Use this authorization later in the remarks section of the
Board of Military Processing-Armed Forces of the United States (DD Form 1966).

S. B. Wittie


S. B. WITTE
By direction

20 June 00
[Signature]

Copy to:
CO 1st MCD

AR0817
0261

ADMINISTRATIVE ACTION (5216) NAVMC 10274 (REV. 3-93) (EF) Previous editions will be used SN: 0108-LF-083-3200 UJ: PADS OF 100		1. ACTION NO. 2. SSIC/FILE NO.
4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.) E-6, WILLIAM O. BEE, ██████████, 0369/USMC ██████████		3. DATE 20121083
5. VIA (As required)		6. ORGANIZATION AND STATION (Complete address) COMMANDING OFFICER FIELD MEDICAL TRAINING BATTALION-EAST PSC BOX 20042 CAMP LEJEUNE, NC 28542-0042
7. TO: COMMANDANT OF THE MARINE CORPS SEPARATION AND RETIREMENT BRANCH MMSR-3 3280 RUSSELL ROAD QUANTICO, VA 22134-5103	8. NATURE OF ACTION/SUBJECT REQUEST TO PARTICIPATE IN THE FY13 MARINE CORPS ENLISTED VOLUNTARY SEPARATION PAY PROGRAM. REQUEST TO SEPARATE 01 APRIL 2013. wob	
10. REFERENCE OR AUTHORITY (If applicable) MARADMIN 544/12		9. COPY TO (As required) SNM
11. ENCLOSURES (If any) (1) COMMANDING OFFICER'S ENDORSEMENT		
12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of originator and sign 3 lines below text) I. Per the reference (a), I am requesting to participate in the Voluntary Separation Pay Program. The following information is provided: "I understand that by taking Voluntary Separation Pay (VSP), I am foregoing the benefits, financial and otherwise, of an active duty retirement. I understand that I accept a three year obligation in the individual ready reserve. I understand that if I am later qualified for retirement or retainer pay, I shall have deducted from each payment of such retired or retainer pay a monthly scheduled amount until the total amount deducted from such retired or retainer pay is equal to the total amount of VSP previously received. I have been counseled on and understand the contents of the VSP, MARADMIN 544/12."		
13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)		


 W. O. Bee

Designed using FormFlow 2.15, HQMC/ARAE May 98

SSN: [REDACTED] NAME: BEE, WILLIAM O.
PRES-GRADE: E6 DATE: 20130710

PAY ENTRY DATE: 20000620 DATE OF ENL / ACCEPT: 20090430
ACTIVE DUTY DATE: TOTAL COMM SVC: 000000

ORIG ENTRY DATE: 19990916

DISCHARGE DATE: 20130401 DCTB: 20070704

END OBLIG SVC: 20070915 GEODCTB: 00
OVERSEAS CONTROL DATE: 20090312

REENLISTMENT ID: 1A RETIREMENT GRADE:
SEPARATION CODE: MCN1 EFFECTIVE DATE:

CSB ELECT DATE: HIGHEST GRADE HELD:
CSB ELECT CD/DESC:

ACTIVE SVC: 000050 CONSTRUCTIVE SVC: 0
INACTIVE SVC: 000000 RETIREMENT PAY MULT SVC:
TOTAL ACT CONSEC SVC: 0 CAREER SVC PAY: 0
TOTAL CONSEC SVC: 0 INACDU POINTS:
TOTAL SVC: 0 INACDU POINTS EQ: 000000
TOTAL QUAL SVC: 13-00-00 PLAN RETIREMENT REQ:

MAND REMOVAL DATE: TOTAL RETIREMENT POINTS: 4684
ANNIV DATE: 20130916 TOTAL QUAL SERVICE: 13-00-00
DATE ELIG TO RET: TOTAL SATISFACTORY YEARS: 13
CRCR CERT DATE: 000000

RCSBP DATE: COMBAT SERVICE CODE: T
RCSBP OPTION COMBAT DSBL
RCSBP TYPE CVG LAST COMBAT TOUR20081017
RCSBP LEVEL HEROISM: 0
RCSBP AMT CVG: 0

SSN: [REDACTED]
PRES-GRADE: E6

NAME: BEE, WILLIAM G.
DATE: 20130710

FROM	TO	COMBAT OP LOC	COMBAT OP DESC
20100608	20100611	AFGHANISTAN	OEF09 WIA GRADE 2 CONCUSSION
20091216	20100607	AFGHANISTAN	OEF09
20010919	20020320	LP6F-MED/LFSF-AR	ENDURING FREEDOM
20011123	20020220	PAKISTAN/AFGHANISTAN	SWIFT FREEDOM
20080312	20081018	AFGHANISTAN	PART OP OPERATION ENDURING FREEDOM

FROM	TO	VESSEL NAME	NET SEA DAYS
20010919	20020418	USSSHREVEPORT	700
20010711	20010718	USSBATAAN	8
20010504	20010509	USSSHREVEPORT	6
20010731	20010819	BATAAN	19

SSN: [REDACTED]
PRES-GRADE: E6

NAME: BEE, WILLIAM O.
DATE: 20160102

FROM	TO	COMBAT OP LOC	COMBAT OP DESC
20010919	20020320	LF6F-MED/LF5F-AR	ENDURING FREEDOM
20011123	20020220	PAKISTAN/AFGHANISTAN	SWIFT FREEDOM
20080312	20081018	AFGHANISTAN	PART OP OPERATION ENDURING FREEDOM
20091216	20100607	AFGHANISTAN	OEF09
20100608	20100611	AFGHANISTAN	OEF09 WIA GRADE 2 CONCUSSION

FROM	TO	VESSEL NAME	NET SEA DAYS
20010504	20010509	USSSHREVEPORT	6
20010711	20010718	USSBATAAN	8
20010731	20010819	BATAAN	19
20010919	20020418	USSSHREVEPORT	700

SSN: ██████████ NAME: BEE, WILLIAM O.
 PRES GRADE: E6 DATE: 20160102
 RUC: 00000 COMPANY CODE: RECSTAT: E
 COMP CODE: PLT CODE: TRNGRP: H
 R-RECSTAT: 9 RCOMP CODE: K7

Unit Organization	Primary Duty	Remarks
		20040409 TR MCC J9F TEM DU EDA 20040428
RECRUITER SCHOOL (STUD PERS) SAN DIEGO 34024		20040429 JOIN RUC 34024 MCC J9F GND STUD 81C
	STUDENT	20040503 CHPRIDU
	BILLET DESIGNATOR-ENL (DCONID) 9916	20040503 CHPRIDU
		20040617 TR MCC 988 DU EDA 20040724
	RECRUITER	20040720 CHPRIDU
	RECRUITER 8411	20040720 CHPRIDU
USMC RS PITTSBURGH PITTSBURGH 80001		20040720 JOIN RUC 80001 MCC 988 DU
	PRODUCTION RECRUITER	20070213 CHPRIDU
		20070701 TR MCC V16 DU EDA 20070731
1STBN 6THMAR 2DMARDIV CAMP LEJEUNE 12160		20070704 JOIN RUC 12160 MCC V16 DU
	RIFLEMAN	20070706 CHPRIDU
	RIFLEMAN 0311	20070706 CHPRIDU
	PLATOON SERGEANT	20070822 CHPRIDU

USMC FITNESS REPORT (1610) NAVMC 10835A (Rev. 1-01) (WN 3.0) PREVIOUS EDITIONS WILL NOT BE USED		COMMANDANT'S GUIDANCE				DO NOT STAPLE THIS FORM	
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>							
A. ADMINISTRATIVE INFORMATION							
1. Marine Reported On:							
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS
BEE	WILLIAM	O	[REDACTED]	SGT	20050301	0311	8411
2. Organization:							
a. MCC	b. RUC	c. Unit Description					
988	80001	MCRS PITTSBURGH					
3. Occasion and Period Covered:				4. Duty Assignment (descriptive title):			
a. OCC	b. From	To	c. Type				
AN	20050301	20050331	N	CANVASSING RECRUITER			
5. Special Case:			6. Marine Subject Of:			7. Recommended For Promotion:	
a. Adverse	b. Not Observed	c. Extended	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Special Information:				9. Duty Preference:			
a. QUAL	N N	d. HT(in)	68	g. Reserve Component			
b. PFT	A247	a. WT	160	h. Future Use			
c. Status		f. Body Fat		i. Future Use			
				1st	V13	1/3 3RDMARDIV KANEOHE BAY HI	
				2nd	1GR	1ST LT ARMORED RECONBN CAMPEN	
				3rd	TNN	UN IRAQ-KUWAIT OBSERVER	
10. Reporting Senior:							
a. Last Name	b. Initc. Service	d. SSN	e. Grade	f. Duty Assignment			
SHERMAN	MD USMC	[REDACTED]	MAJ	COMMANDING OFFICER			
11. Reviewing Officer:							
a. Last Name	b. Initc. Service	d. SSN	e. Grade	f. Duty Assignment			
FOERSCH	WJ USMC	[REDACTED]	COL	COMMANDING OFFICER			
B. BILLET DESCRIPTION							
<ul style="list-style-type: none"> - Directly responsible to RSE NCOIC. - Primary duties include canvassing, screening and selling prospective applicants for enlistment in accordance with systematic recruiting. - Motivating and mentally/physically preparing pooltees for recruit training. - Effectively utilizing programs. - Establishing professional working relationships with members of the community. 							
C. BILLET ACCOMPLISHMENTS							

USMC FITNESS REPORT (1510)										DO NOT STAPLE THIS FORM				
NAVMC 10835A (Rev. 4-03)														
PREVIOUS EDITIONS WILL NOT BE USED										COMMANDANT'S GUIDANCE				
FITREP ID #1137336 (T.A.PES 5.2.4.10)														
<p>The completed fitness report is the most important information component of manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, assignment, resident schooling, commend, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>														
A. ADMINISTRATIVE INFORMATION														
1. Marine Reported On:														
a. Last Name		b. First Name		c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS					
BEE		WILLIAM		0	XXXXX	SSGT	20101001	0369	0311					
2. Organization:														
a. MCC		b. RUC		c. Unit Description										
V16		12160		1STBN 6THMAR 2DMARDIV										
3. Occasion and Period Covered:														
a. OCC		b. From		To	c. Type		4. Duty Assignment (descriptive title):							
TR		20101002		20101115	N		BN SACO							
6. Special Case:														
a. Adverse			b. Not Observed			c. Extended			6. Marine Subject Of:			7. Recommended For Promotion:		
<input type="checkbox"/>			<input checked="" type="checkbox"/>			<input type="checkbox"/>			a. Commendatory Material <input type="checkbox"/>			b. Derogatory Material <input type="checkbox"/>		
									c. Disciplinary Action <input type="checkbox"/>			a. Yes <input type="checkbox"/>		
												b. No <input type="checkbox"/>		
												c. NGA <input checked="" type="checkbox"/>		
8. Special Information:														
a. QUAL		d. HT (in.)		g. Reserve Component		9. Duty Preference:								
NN		67				a. Code b. Descriptive Title								
b. PFT		e. WT		h. Status		1st		Y09 POST OR STATION WEST COAST						
NREQ		170				2nd		Y08 POST OR STATION EAST COAST						
c. CFT		f. Body Fat		i. Future Use		3rd								
NREQ														
10. Reporting Senior:														
a. Last Name		c. Inlt. Service		d. SSN		e. Grade		f. Duty Assignment						
HEATHERMAN		BG USMC		XXXXX		MAJ		BN EXECUTIVE OFFICER						
11. Reviewing Officer:														
a. Last Name		c. Inlt. Service		d. SSN		e. Grade		f. Duty Assignment						
BENSON		GS USMC		XXXXX		LTCOL		BATTALION COMMANDER						
B. BILLET DESCRIPTION														
<ul style="list-style-type: none"> - Supervise urinalysis testing program in accordance with MCO P1700.24B. - Report all violations of the Marine Corps policy on substance abuse to the Battalion Commander. - Identify, evaluate, counsel, and recommend referral of alcohol/drug abusers to the Substance Abuse Rehabilitation Program (SARP). - Provide liaison between SARP treatment facility and the command to deconflict between operational tempo, needs of the Marine Corps, and needs of the individual Marine. - Case management of individuals and appointments of personnel identified or requesting assistance with substance abuse issues. - Monitor service members during and throughout various treatment programs. - Provide individual aftercare programs at the battalion level. 														
C. BILLET ACCOMPLISHMENTS														

USMC FITNESS REPORT (1510)										DO NOT STAPLE THIS FORM	
NAVMC 10835A (Rev. 4-03)											
PREVIOUS EDITIONS WILL NOT BE USED										COMMANDANT'S GUIDANCE	
FITREP ID #1162976 (J A-PES 5.2.4.10)											
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, assignment, reassignment, school, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflated markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>											
A. ADMINISTRATIVE INFORMATION											
1. Marine Reported On:											
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DDR	g. PMDS	h. BILMOS				
BEE	WILLIAM	O	XXXXX	SSGT	20101001	0369	0369				
2. Organization:											
a. MCC	b. RUC	c. Unit Description									
K61	31301	FLD MED TRNG BN EAST (PERM PERS)									
3. Occasion and Period Covered:											
a. OCC	b. From	To	c. Type	d. Duty Assignment (descriptive title)							
AN	20101116	20101231	N	MILITARY ADVISOR/MILITARY SUBJECT INSTRUCTOR							
6. Special Case:											
a. Advance	b. Not Observed	c. Extended	6. Marine Subject Of:			7. Recommended For Promotion:					
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Commandatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A			
8. Special Information:											
a. QUAL	ES	d. HT(in.)	67	g. Reserve Component		9. Duty Preference:					
b. PFT	A226	e. WT	170	h. Status		a. Code	b. Descriptive Title				
c. CFT	A283	f. Body Fat		i. Future Use		1st	Y05	FMF EAST COAST			
10. Reporting Senior:											
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment							
ALAZIZ	S	USN	XXXXX	LT	COMPANY COMMANDER						
11. Reviewing Officer:											
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment							
ARELLANO	RE	USN	XXXXX	CAPT	COMMANDING OFFICER						
B. BILLET DESCRIPTION											
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. - Instructs, develops, and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and the M4 rifle as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Students Performance, Academic, and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 											
C. BILLET ACCOMPLISHMENTS											

USMC FITNESS REPORT (1510) FITREP ID 21386712 (1 A-PER 5.3.1.1)										
NAVMC 18835A (Rev. 4-03)										
PREVIOUS EDITIONS WILL NOT BE USED										
FOUO - Privacy sensitive if filled in										
COMMANDANT'S GUIDANCE										
DO NOT STAPLE THIS FORM										
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, assignment, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commandant of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated records.</p>										
A. ADMINISTRATIVE INFORMATION										
1. Marine Reported On:										
a. Last Name		b. First Name		c. MI	d. SSN	e. Grade	f. DOR	g. PMDS	h. BILMOS	
BEE		WILLIAM		0	XXXXX	SSGT	20101001	0369	3529	
2. Organization:										
a. MCC		b. RUC		c. Unit Description						
K61		31301		FLD MED TRNG BN EAST (PERM PERS)						
3. Occasion and Period Covered:										
a. OCC		b. From		c. To		d. Duty Assignment (descriptive title)				
AN		20110101		20111231		N MILITARY ADVISOR/MILITARY SUBJECT INSTRUCTOR				
6. Special Case:										
a. Advance			b. Not Observed			c. Extended			6. Marine Subject Of:	7. Recommended For Promotion:
<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>			a. Commendatory Material <input type="checkbox"/>	b. Derogatory Material <input type="checkbox"/>
<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>			c. Disciplinary Action <input type="checkbox"/>	a. Yes <input checked="" type="checkbox"/>
<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>			c. N/A <input type="checkbox"/>	b. No <input type="checkbox"/>
8. Special Information:										
a. QUAL		d. HT(In.)		g. Reserve Component		9. Duty Preference:				
ES		68				a. Code b. Descriptive Title				
b. PFT		e. WT		h. Status		1st Y05 FMF EAST COAST				
A215		170				2nd Y08 POST OR STATION EAST COAST				
c. CFT		f. Body Fat		i. Future Use		3rd Y11 SECURITY FORCES - ATLANTIC				
A298										
10. Reporting Senior:										
a. Last Name		b. Inltc. Service		d. SSN		e. Grade		f. Duty Assignment		
ALAZIZ		S USN		XXXXX		LT		COMPANY COMMANDER		
11. Reviewing Officer:										
a. Last Name		b. Inltc. Service		d. SSN		e. Grade		f. Duty Assignment		
ARELLANO		RE USN		XXXXX		CAPT		COMMANDING OFFICER		
B. BILLET DESCRIPTION										
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps. - Instructs, develops, and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuing presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 carbine as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Students Performance, Academic, and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 										
C. BILLET ACCOMPLISHMENTS										
<ul style="list-style-type: none"> - Developed field exercise resulting in better trained Navy Personnel that more accurately represents current tactics techniques and procedures currently being experienced in current operational theatres. - Trained 1347 Students in offensive/defensive attacks, ambushes and land navigation field exercise and hikes. - SNMs platoons received 3 "Top Dog" awards, 3 "Honor Graduates", 1 "Super Squad" And 1 "Super Doc" award over a period of 5 classes. - Completed Formal School Instructor Course - Personally led, mentored and trained 314 Sailors during this reporting period for duty in the Marine Operating Forces. - Led platoons on 20 conditioning hikes totaling 100 miles. - Maintained flawless accountability of personnel, weapons, and equipment for his platoons. 										

USMC FITNESS REPORT (11E10) (FORM 1043) (7 A-PES 5.3.1.1)										DO NOT STAPLE THIS FORM			
NAVMC 10835A (Rev. 4-03)													
PREVIOUS EDITIONS WILL NOT BE USED													
FOUO - Privacy sensitive if filled in													
COMMANDANT'S GUIDANCE													
The scrupulous fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, reassignment, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflated or deflated markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.													
A. ADMINISTRATIVE INFORMATION													
1. Marine Reported On:													
a. Last Name		b. First Name		c. MI		d. SSN		e. Grade		f. DOR		g. PMOS	h. BILMOS
BEE		WILLIAM		O		XXXXX		SSGT		20101001		0369	0369
2. Organization:													
a. MCC		b. RUC		c. Unit Description									
K61		31301		FLD MED TRNG BN EAST (PERM PERS)									
3. Occasion and Period Covered:													
a. OCC		b. From		To		c. Type		4. Duty Assignment (descriptive title):					
AN		20120101		20121231		N		MILITARY INSTRUCTOR					
6. Special Case:													
a. Advance		b. Not Observed		c. Extended		6. Marine Subject Of:			7. Recommended For Promotion:				
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A		
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
8. Special Information:													
a. QUAL		d. HT(In.)		g. Honors Component		1st		9. Duty Preference:					
ES		67				Y00		a. Code b. Descriptive Title					
b. PFT		e. WT		h. Status		2nd		Y00 NO PREFERENCE / AS DIRECTED					
A219		170				3rd		Y00 NO PREFERENCE / AS DIRECTED					
c. CPT		f. Body Fat		i. Future Use									
A286													
10. Reporting Senior:													
a. Last Name		b. Inltc. Service		d. SSN		e. Grade		f. Duty Assignment					
ALAZIZ		S		USN XXXXX		LCDR		COMPANY COMMANDER					
11. Reviewing Officer:													
a. Last Name		b. Inltc. Service		d. SSN		e. Grade		f. Duty Assignment					
CLONTZ		DT		USN XXXXX		CAPT		COMMANDING OFFICER					
B. BILLET DESCRIPTION													
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. - Instructs, develops and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Student Performance, Academic and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 													
C. BILLET ACCOMPLISHMENTS													
<ul style="list-style-type: none"> -Assisted in the development and refinement of the battalion's culminating field exercise resulting in more realistic and current tactics, techniques and procedures used in the Fleet Marine Force. -Personally led, mentored and trained over 268 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training. -As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations. -Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance throughout the calendar year. -flawlessly maintained accountability of personnel, weapons, and equipment. 													

USMC FITNESS REPORT (1510) FITREP ID #1023427 (1 A-PES 5.3.1.1)										DO NOT STAPLE THIS FORM				
NAVMC 10835A (Rev. 4-03)														
PREVIOUS EDITIONS WILL NOT BE USED														
FOUO - Privacy sensitive if filled in														
COMMANDANT'S GUIDANCE														
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, commands, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commandant of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.														
A. ADMINISTRATIVE INFORMATION														
1. Marine Reported On:														
a. Last Name		b. First Name		c. MI	d. SSN	e. Grade	f. DCR	g. PMOS	h. BILMOS					
BEE		WILLIAM		0	XXXXXX	SSGT	20101001	0369	0369					
2. Organization:														
a. MCC		b. RUC		c. Unit Description										
K61		31301		FLD MED TRNG BN EAST (PERM PERS)										
3. Occasion and Period Covered:														
a. OCC		b. From		c. To		d. Duty Assignment (descriptive title)								
EN		20130101		20130401		N		MILITARY INSTRUCTOR						
6. Special Case:														
a. Adverse			b. Not Observed			c. Extended			6. Marine Subject Of:			7. Recommended For Promotion:		
<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>			a. Commendatory Material <input checked="" type="checkbox"/>			a. Yes <input checked="" type="checkbox"/>		
									b. Derogatory Material <input type="checkbox"/>			b. No <input type="checkbox"/>		
									c. Disciplinary Action <input type="checkbox"/>			c. N/A <input type="checkbox"/>		
8. Special Information:														
a. QUAL		d. HT(In.)		g. Reserve Component		9. Duty Preference:								
ES		68				a. Code b. Descriptive Title								
b. PFT		e. WT		h. Status		1st		Y00 NO PREFERENCE / AS DIRECTED						
NREQ		172				2nd		Y00 NO PREFERENCE / AS DIRECTED						
c. CFT		f. Body Fat		i. Future Use		3rd		Y00 NO PREFERENCE / AS DIRECTED						
NREQ														
10. Reporting Senior:														
a. Last Name		b. Inlt. Service		d. SSN		e. Grade		f. Duty Assignment						
ALAZIZ		S USN		XXXXX		LCDR		COMPANY COMMANDER						
11. Reviewing Officer:														
a. Last Name		b. Inlt. Service		d. SSN		e. Grade		f. Duty Assignment						
CLONTZ		DT USN		XXXXX		CAPT		COMMANDING OFFICER						
B. BILLET DESCRIPTION														
-To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. -Instructs, develops and evaluates Navy Petty Officers in combat leadership. -Coordinates and execute a progressive physical fitness program for Navy students. -Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform and accountability of gear and personnel. -Establishes and updates lesson plans and supporting material. -Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as developing their marksmanship. -Responsible for instructing and supervising close order drill. -Active member of Student Performance, Academic and Disciplinary Review Boards. -Responsible for accountability, good order and discipline, and morale of personnel.														
C. BILLET ACCOMPLISHMENTS														
-Personally led, mentored and trained over 74 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training. -As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations. -Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance. -Flawlessly maintained accountability of personnel, weapons, and equipment.														

PERSONAL AWARD RECOMMENDATION		The Privacy Act Statement for information on this form is contained in NAVMC Form 11000, Privacy Act Statement for Marine Corps Personnel and Pay Records.	
FROM: (Title and Address) Commanding Officer Field Medical Training Battalion East PSC Box 20042 Camp Lejeune, NC 28542		TO: (Awarding Authority) Commanding Officer Field Medical Training Battalion East PSC Box 20042 Camp Lejeune, NC 28542	
14. EXP. OF ACTIVE DUTY: 04/01/2013		15. EST. DETACHMENT DATE: 04/01/2013 <input type="checkbox"/> Retirement <input type="checkbox"/> Transfer	
16. NEW DUTY STATION (Home address if separation anticipated):		IF RETIREMENT, NUMBER OF YEARS: <input checked="" type="checkbox"/> Terminal Leave <input type="checkbox"/> Impact Award	
1. SOCIAL SECURITY #: [REDACTED]	2. DESIG/NEC/MOS: 0369	15. EST. DETACHMENT DATE: 04/01/2013 <input type="checkbox"/> Retirement <input type="checkbox"/> Transfer	
3. NAME (Last, first, MI): BEE, WILLIAM O	4. COMPONENT (USN, USMC, etc.): USMC	16. NEW DUTY STATION (Home address if separation anticipated):	
5. GRADE/RANK: SSGT	17. UNIT AT TIME OF ACTION/SERVICE: FLD MED TRNG BN EAST	18. DUTY ASSIGNMENT: N/A	
6. WARFARE DESIGNATOR (Navy Only):	7. RUC: 31301	19. PREVIOUS PERSONAL DECORATIONS AND PERIOD RECOGNIZED: NA - 05/01/2010 NA - 06/02/2008 CR - 01/11/2002	
8. RECOMMENDED AWARD: NA - NAVY AND MC ACHIEVEMENT	9. SPECIFIC ACHIEVEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	19. PREVIOUS PERSONAL DECORATIONS AND PERIOD RECOGNIZED: NA - 05/01/2010 NA - 06/02/2008 CR - 01/11/2002	
10. TYPE: <input type="checkbox"/> Heroic <input type="checkbox"/> Heroic Posthumous <input type="checkbox"/> MIA <input checked="" type="checkbox"/> Meritorious <input type="checkbox"/> Meritorious Posthumous			
11. NUMBER OF AWARD OF RECOMMENDED MEDAL: 3		20. PERSONAL AWARDS RECOMMENDED NOT YET APPROVED: NONE	
12. ACTION DATE/MERITORIOUS PERIOD: 01/11/2010 - 02/18/2013		21. OTHER PERSONNEL BEING RECOMMENDED FOR SAME ACTION:	
13. GEOGRAPHIC AREA OF ACTION/SERVICE: CONUS			
22. I certify that the facts contained in the summary of action are <input checked="" type="checkbox"/> known to me <input type="checkbox"/> a matter of record			
NAME, GRADE, TITLE OF ORIGINATOR ALAZIZ, SAAD MUHAMMAD, CIV Training Officer		SIGNATURE Saad Muhammad Alaziz Training Officer	DATE 01/14/2013
23. FORWARDING ENDORSEMENTS BY VIA ADDRESSEE(S):			
VIA COMMAND	RECOMMENDED AWARD	COMBAT "V"	SIGNATURE & GRADE
24. TO BE COMPLETED BY AWARDING AUTHORITY			
DISPOSITION OF BASIC RECOMMENDATION	COMBAT "V"	EXTRAORDINARY HEROISM	SIGNATURE, GRADE, TITLE
NA - NAVY AND MC ACHIEVEMENT	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	David Thomas Clontz David Thomas Clontz CAPT/Commanding Officer
			DATE APPROVED 02/13/2013

NAVMC 11533 (EF)

AR0963
0407

Summary of Action

Sergeant Bee was in receipt of imminent danger pay during this period. The combat distinguishing device is authorized.

Sergeant William O. Bee, a squad leader for Fourth Platoon, Company A, Battalion Landing Team, First Battalion, Sixth Marines, 24th Marine Expeditionary Unit, International Security Assistance Force in the Garmsir District, Helmand Province, Afghanistan from 29 April to 02 June 2008 in support of Operation Azada Wosa is enthusiastically recommended for the Navy and Marine Corps Achievement Medal with the Combat Distinguishing Device, Bronze V.

Since deploying to Afghanistan as the Third Squad Leader for Fourth Platoon, Sergeant Bee time and again sought opportunities to refine his squads tactics, techniques and procedures through constant classes, rehearsals and debriefs. He embraced the role of teacher, never hesitating to offer alternative methods for accomplishing a mission in order to better equip the Marines in his charge to function independently when the time comes. Always thinking ahead, he was proactive in anticipating possible missions and talking through possible solutions to tactical problems before his squad found itself in the situation.

On 29 April 2008, after securing the southern portion of the perimeter during the heli-borne insertion of the company into its landing zone in the Helmand Province, Sergeant Bee began leading his squad south on its dismounted movement into its final area of operations. During this movement south, his squad was responsible for locating and destroying an improvised explosive device making facility and large quantity of drugs placed upon a concealed reverse pressure-plate style booby trap during the clearance of its assigned buildings. His ability to identify and locate the improvised explosive device cell was a testament to his attention to detail. The cell could have been overlooked if not for his insistence that sensitive sight exploitation be conducted during each clearance operation.

When the company reached its area of operations and began its systematic clearance of the area and the securing of Battalion Objective A, his leadership abilities would again become obvious. On 4 May, his squad executed a feint at the crossing point of the Redskins Canal, by setting in a support by fire position and providing security to an engineer detachment which shot an APOB charge across the bridge, clearing it for future use. As the squad then began to clear the areas buildings, they found a door they believed was rigged with explosives. Sergeant Bee utilized his attached engineers to blow the door with a small explosive charge which allowed the squad the ability to continue to clear buildings in zone. During the clearance his squad received an RPG followed by small arms fire. Unable to identify the enemys position, Sergeant Bee moved into a position where he could gather the proper fire mission information. Selflessly exposing himself to enemy small arms fire that was impacting all around him, he quickly used his compass to get a direction then took cover. After ranging the distance he passed the information to the platoons scout who then called in an artillery mission on the enemy strongpoint. The suppression he provided ceased the enemy fire and allowed a Weapons Company mobile assault platoon to move in a position to better engage the enemy with their heavy machine guns. Following the initial indirect fires, he called for the scout to repeat the mission so he could retrograde his squad back to the platoon position under the cover of both direct assets from the mobile assault platoon and artillery fire. His squads successful feint allowed for the disruption of the enemys defensive lines as well as diverting the enemys attention from the seizure of buildings the company would use to stage its night infiltration across the canal.

While on patrol in the eastern portion of the companys area of operations several days later, his squad was clearing compounds when they found a tree stand firing position in a tree line that the company had been receiving fire from the previous several days. In a neighboring compound his Marines also located a functional rifle. His squad and their attached engineers reduced the tree stand position with a small explosive charge and brought the rifle back to the company combat operations center.

When the company began its efforts to flank the enemys prepared defensive lines on 11 May, Sergeant Bees squad was tasked with setting in a support by fire position capable of covering the rest of the platoons clearance of a series of compounds on the western edge of the companys area of operation. He moved his squad to the position he had determined would give adequate coverage and set them in a linear position capable of covering his platoon. On 2 June, the company began a detailed clearance of the Amir Agha bazaar to deny the enemy the ability to cache weapons or ordnance within its hundreds of shops. Sergeant Bees squad was tasked with clearing the long axis of the bazaar along its main road. This branch of the bazaar was isolated from the rest of the bazaar and Sergeant Bees squad was tasked as a result of their ability to operate effectively on their own. His squad was able to move steadily throughout the clearance and finished his assigned area ahead of projections.

Sergeant Bees actions throughout this period were characteristic of his tireless devotion to his assigned missions. His eagerness to learn and his sincere desire to mentor his Marines contributed immeasurably to the accomplishment of the platoons mission. For his actions, Sergeant Bee is enthusiastically recommended for the Navy and Marine Corps Achievement Medal with Combat Distinguishing Device.

NAVMC 11533 (EF)

AR0967
0411



DEPARTMENT OF THE NAVY
THIS IS TO CERTIFY THAT
THE SECRETARY OF THE NAVY HAS AWARDED THE
NAVY AND MARINE CORPS ACHIEVEMENT MEDAL
(WITH COMBAT DISTINGUISHING DEVICE)

TO
SERGEANT WILLIAM O. BEE, UNITED STATES MARINE CORPS

FOR

HEROIC SERVICE WHILE SERVING AS A SQUAD LEADER, COMPANY A, BATTALION LANDING TEAM 1ST BATTALION, 4TH MARINE DIVISION, 24TH MARINE EXPEDITIONARY UNIT II MARINE EXPEDITIONARY FORCE FROM 21 APRIL 2004 TO 2 JUNE 2004 DURING OPERATION ANZA WOLA, NEPAL AND PROVINCE, AFGHANISTAN SERGEANT BEE'S PLANON WAS PARRED WITH CONDUCTING A FEINT ON A SERIES OF COMPOUNDS TO THE SOUTHWEST OVERLOOKING THE BATTALION'S MAJOR SUPPLY ROUTE AS HIS SQUAD SLEW A SERIES OF FIVE COMPOUNDS THEY CAME UNDER INTENSE SMALL ARMS AND ROCKET PROPELLED GRENADE FIRE FROM 400 METERS TO THE WEST UNABLE TO IDENTIFY THE POINT OF ORIGIN SERGEANT BEE SELFLESSLY EXPOSED HIMSELF TO THE ENEMY'S SMALL ARMS FIRE AS ROCKS IMPACTED AROUND HIM AND OVERHEAD IN DETERMINED DIRECTION AND DISTANCE AND FORMULATED AN ARTILLERY CALL FOR FIRE BEHIND OF THE ENEMY'S POSITION THE ARTILLERY BARRAGE PROVIDED SUPPRESSION FOR THE COMPANY'S MORALE ASSAULT ATTACHMENT TO PUSH FORWARD IN SUPPORT OF THE FEINT HIS ACTIONS FOCUSED THE EFFORT TO THE WEST AS THE COMPANY LOADED ITS ASSAULT POSITION TO THE SOUTH UNIMPDED SERGEANT BEE'S INITIATIVE, COURAGE AND DEVOTION TO DUTY REFLECTED GREAT CREDIT UPON HIMSELF AND WERE IN KEEPING WITH THE HIGHEST TRADITIONS OF THE MARINE CORPS AND THE UNITED STATES NAVAL SERVICE

GIVEN THIS 20TH DAY OF NOVEMBER 2008



[Signature]
FOR THE SECRETARY OF THE NAVY
S. Y. BELAND
LIEUTENANT COMMANDER, U. S. MARINE CORPS
HEADQUARTERS U. S. MARINE CORPS FORCE
CENTRAL COMMAND

AR0969
0413

PERSONAL AWARD RECOMMENDATION		PRIVACY ACT STATEMENT		
FROM: (Title and Address) ADJUTANT 1STBN 6THMAR 2DMARDIV PSC BOX 20098 CAMP LEJEUNE NC 28542 0098		The Privacy Act Statement for information on this form is contained in NAVMC Form 11000, Privacy Act Statement for Marine Corps Personnel and Pay Records.		
TO: (Awarding Authority) CG, 1st MARDIV (FWD) 1ST MARDIV (FORWARD)		14. EXP. OF ACTIVE DUTY: 06/29/2013	15. IF RETIREMENT, NUMBER OF YEARS:	
1. SOCIAL SECURITY #: [REDACTED]	2. DESIG/NEC/MOS: 0311	15. EST. DETACHMENT DATE: <input type="checkbox"/> Retirement <input type="checkbox"/> Transfer <input type="checkbox"/> Terminal Leave <input checked="" type="checkbox"/> Impact Award		
3. NAME (Last, first, MI): BEE, WILLIAM O		4. COMPONENT (USN, USMC, etc.): USMC	16. NEW DUTY STATION (Home address if separation anticipated):	
5. GRADE/RANK: SGT	17. UNIT AT TIME OF ACTION/SERVICE: 1STBN 6THMAR 2DMARDIV	18. DUTY ASSIGNMENT:		
6. WARFARE DESIGNATOR (Navy Only):		7. RUC: 12160	19. PREVIOUS PERSONAL DECORATIONS AND PERIOD RECOGNIZED: NA - 06/02/2008 CR - 01/11/2002	
8. RECOMMENDED AWARD: NV - NAVY AND MC ACHIEVEMENT W/ V		9. SPECIFIC ACHIEVEMENT: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
10. TYPE: <input checked="" type="checkbox"/> Heroic <input type="checkbox"/> Heroic Posthumous <input type="checkbox"/> MIA <input type="checkbox"/> Meritorious <input type="checkbox"/> Meritorious Posthumous				
11. NUMBER OF AWARD OF RECOMMENDED MEDAL: 2		20. PERSONAL AWARDS RECOMMENDED-NOT YET APPROVED:		
12. ACTION DATE/MERITORIOUS PERIOD: 01/17/2010 - 06/01/2010		21. OTHER PERSONNEL BEING RECOMMENDED FOR SAME ACTION:		
13. GEOGRAPHIC AREA OF ACTION/SERVICE: OCONUS - OPERATION ENDURING FREEDOM				
22. I certify that the facts contained in the summary of action are <input type="checkbox"/> known to me <input checked="" type="checkbox"/> a matter of record				
NAME, GRADE, TITLE OF ORIGINATOR NAGEL, NATHAN LANE, 1STLT Adjutant		SIGNATURE Nathan Lane Nagel Adjutant	DATE 05/29/2010	
23. FORWARDING ENDORSEMENTS BY VIA ADDRESSEE(S)				
VIA COMMAND	RECOMMENDED AWARD	COMBAT "V"	SIGNATURE & GRADE	DATE FWD
Commanding Officer 1/6 2D MARDIV (R/U)	NV - NAVY AND MC ACHIEVEMENT W/ V	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Calvert L J R Worth Calvert L JR Worth LTCOL	08/11/2010
Commanding Officer 7TH MAR REGT 1ST MARDIV (R/U)	NV - NAVY AND MC ACHIEVEMENT W/ V	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Randall Newman Randall Newman COL	05/27/2010
24. TO BE COMPLETED BY AWARDING AUTHORITY				
DISPOSITION OF BASIC RECOMMENDATION	COMBAT "V"	EXTRAORDINARY HEROISM	SIGNATURE, GRADE, TITLE	DATE APPROVED
NV - NAVY AND MC ACHIEVEMENT W/ V	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Timothy Lee J R Brown Timothy Lee JR Brown GYSGT/Administrative Chief For Joseph L Osterman BGEN, CG, 1st MARDIV (FWD)	07/05/2010

NAVMC 11533 (EF)

AR0970
0414

Summary of Action

Sergeant William Bee was in receipt of Imminent Danger Pay during this period. The Combat Distinguishing Device is recommended.

Sergeant Bee, Squad Leader, First Squad, Third Platoon, Alpha Company, 1st Battalion, 6th Marines, Regimental Combat Team 7, 1st Marine Division Forward, from 17 January to 1 June 2010, is enthusiastically recommended for the Navy and Marine Corps Achievement Medal with Combat Distinguishing Device for the following accomplishments:

-During shaping operations in the NadAli District of Marjah in preparation for Operation Moshtarak, Sgt Bee has led squad on more than 50 patrols while partnered with the Afghan National Army (ANA). These patrols included cordon and searches, night observation posts, and ambush and security patrols.

-On 17 January 2010, Sergeant Bee led his squad on a security patrol in the NadAli District, Afghanistan. As his squad moved west into the city, they received fire from multiple enemy positions. Continuing to push the fight to the enemy he aggressively maneuvered his squad from building to building clearing each position. As his squad neared the limit of advance, Sergeant Bee observed enemy fire impacting in close proximity of First Squad, First Platoon patrolling to the south across an impassible canal. Immediately he ordered his squad to occupy an advantageous position in order to locate the origin of enemy fire. Once in position he observed a Rocket Propelled Grenade Team that was oriented towards First Squad, First Platoon. Sergeant Bee immediately ordered suppressive fires on the RPG Team while he maneuvered to fire an AT-4 on the position. Arriving to a suitable firing position he attempted to fire the rocket; when it misfired he immediately went through the misfire procedures. As he prepared the rocket for the second shot the enemy oriented their fire on his position; remaining calm he fired the rocket, neutralizing the enemy position. Following the rocket shot, his squad was pinned down as they were fired upon by three separate enemy positions. Sergeant Bee remained calm under intense fire and requested a show of force from a rotor section; this ceased the enemy fire and allowed his squad to safely egress. Sergeant Bees aggressive decision making, tactical ability and calmness under fire prevented the enemy from inflicting friendly casualties and led to one low level Taliban Commander killed in action and three enemy wounded.

-On 18 January 2010, Sergeant Bee again led his squad on a security patrol in the NadAli District. He aggressively maneuvered his squad through an area that was under a high level of Taliban influence, coming under fire numerous times during the eight hour patrol. While conducting a quick search of a building, his squad uncovered several large bags of ammonium nitrate. He then ordered his squad to carry out a detailed search of the area which yielded approximately 1500 pounds of ammonium nitrate, 50 pounds of ammonium nitrate fuel oil mixture (ANFO), and other materials associated with Improvised Explosive Device (IED) making materials. Sergeant Bees initiative and intelligent decision making denied the enemy a substantial cache which inhibited their abilities to successfully employ IEDs against Coalition Forces.

-On 13 February 2010, Alpha Company conducted a low light heliborne insertion into the Taliban held city of Marjah. Sergeant Bees Squad was tasked with clearing the eastern sector of Loy Chareh Bazaar and establishing a blocking position within Building 11, P2 Sector. While holding the blocking position for three days his squad came under multiple enemy attacks from buildings within the T15 Sector. Effectively defending this position while under enemy small arms, medium machine gun and RPG fire, he prevented the enemy from massing an attack on Alpha Companys Combat Operations Center.

-On 1 April 2010, First Squad was on a Security Patrol in the V50 Sector of Marjah, an area which was known for a very high level of enemy activity. While searching compounds in the area, his squad uncovered a cache which included: one 107mm Rocket, two 155mm Illumination Round Canisters, and one 155mm Shell Casing, all of which were hidden deep beneath an animal berthing area. Completing the search of the compound, Sergeant Bee requested EOD support to destroy the cache. His thorough search of the compounds reduced the enemys ability to produce Improvised Explosive Devices greatly enhancing the security of Coalition Forces and Afghan local nationals.

-On April 6 2010, Sergeant Bees Squad conducted an overnight observation post which turned into a checkpoint as daylight came. The checkpoint was along route Jessica in the vicinity of building 30, V50 sector. For approximately two hours, Sergeant Bee tactically questioned 30 Afghan Nationals concerning Taliban activity in the area. Two of the individuals were found to be suspicious due to the amount of foreign money they were carrying and the inability of the other local nationals to confirm their identity. The two men were asked to return to Third Platoons Combat Outpost for further questioning, which they agreed to. As First Squad began to return to base, they came under heavy enemy fire from the northwest, northeast and southwest. The squad took cover and was unable to maneuver or egress. Sergeant Bee remained calm and coordinated the fires of his squad to best affect the enemy. As enemy firing positions were identified, he ordered rocket shots on them which silenced the enemy fire. Alpha Company Mobile Section acted as a Quick Reaction Force (QRF) and strong pointed the intersection of routes Jessica and Puma to cover First Squads egress. While returning to base, Sergeant Bees squad conducted a battle damage assessment of the enemy firing positions to the north, which confirmed the origin of the enemy fire. As his squad continued their movement back to the Platoon COP they came under heavy fire from 200 meters to the north. During the engagement his squad took a casualty when a Marine was struck in the leg by small arms fire. Sergeant Bee immediately moved to the casualty to gain situational awareness on the direction of enemy fire, and to supervise the treatment of the wounded Marine. While under fire he identified and ordered the clearance of the MEDEVAC Landing Zone. As the Helicopters were inbound to the LZ, the smoke grenade marking the landing zone failed, and Sergeant Bee took it upon himself to move from a
NAVMC 11533 (EF)

FY13 MARINE CORPS ENLISTED VOLUNTARY SEPARATION PAY (VSP) PROGRAM

Date Signed: 10/1/2012 | MARADMINS Number: 544/12

MARADMINS : 544/12

R 290421Z SEP 12
UNCLASSIFIED/
MARADMIN 544/12

MSGID/GENADMIN/CMC WASHINGTON DC MRA MP//
SUBJ/FY13 MARINE CORPS ENLISTED VOLUNTARY SEPARATION PAY (VSP) PROGRAM//
REF/A/MSGID:DOC/CONGRESS/31DEC2011//
REF/B/MSGID:DOC/CMC MMSR/6JUN2007//
REF/C/MSGID:DOC/CONGRESS/7JAN2011//
REF/D/MSGID:DOC/DOD OSD/12APR2012//
REF/E/MSGID:DOC/SECNAV/YMD:XXAUG2012/NOTAL//
REF/F/MSGID:MSG/CMC/292102ZJUN2009//
REF/G/MSGID:MSG/CMC/152049ZJUL2009//
REF/H/MSGID:WEB/VA/YMD:20101109//

NARR/REF (A) IS THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012 GRANTING THE SERVICES TEMPORARY AUTHORITY TO OFFER MILITARY PERSONNEL THE OPTION OF VOLUNTARY SEPARATION. REF (B) IS MCO P1900.16F, MARINE CORPS SEPARATION AND RETIREMENT MANUAL. REF (C) IS TITLE 10, UNITED STATES CODE, SECTION 1175A WHICH APPLIES TO VOLUNTARY SEPARATION PAY. REF (D) IS MEMORANDUM FROM THE OFFICE OF THE UNDER SECRETARY OF DEFENSE PROVIDING PROCEDURAL GUIDANCE FOR THE CONDUCT OF VOLUNTARY SEPARATION PAY (VSP) PROGRAM. REF (E) IS SECNAV APPROVAL OF VOLUNTARY SEPARATION PAY (VSP)

AR0976
0420

Case 1:21-cv-01970-LAS Document 46-4 Filed 08/18/23 Page 11 of 557
Case 1:21-cv-01970-LAS Document 7-6 Filed 11/30/21 Page 125 of 127

- F. MARINES MUST NOT BE DISCHARGED OR PENDING DISCHARGE WITH DISABILITY SEVERANCE PAY, TRANSFERRED TO THE TEMPORARY OR PERMANENT DISABILITY RETIRED LIST, EVALUATED FOR DISABILITY RETIREMENT, OR PREVIOUSLY DISCHARGED WITH VOLUNTARY SEPARATION PAY.
- G. THE EFFECTIVE DATE OF SEPARATION MUST BE NO LATER THAN 30 SEPTEMBER 2013. REEVALUATION OF ELIGIBLE MOS'S AND GRADES AND ADJUSTMENTS TO THE ELIGIBLE POPULATION WILL OCCUR NO LESS THAN ANNUALLY THROUGHOUT THE DRAWDOWN PERIOD.
- H. PER REFERENCE D, MARINES WHO PREVIOUSLY ELECTED TO TRANSFER POST 9/11 GI BILL BENEFITS ARE ELIGIBLE FOR VSP WITH NO EFFECT ON TRANSFERRED BENEFITS. THIS WAIVER OF OBLIGATED SERVICE FOR POST 9/11 GI BILL BENEFITS TRANSFER IS ONLY APPLICABLE TO FORCE SHAPING SEPARATIONS.
- I. WAIVERS OF OTHER SERVICE OBLIGATIONS INCURRED WILL BE CONSIDERED ON A CASE-BY-CASE BASIS BASED ON THE NEEDS OF THE MARINE CORPS.
- J. BY ACCEPTING VSP, MARINES MUST AGREE TO SERVE 3 YEARS IN THE INDIVIDUAL READY RESERVE (IRR).
3. SEPARATIONS PAY COMPUTATION.
- A. SEPARATIONS PAY WILL BE CALCULATED AS 20 PERCENT (.2) MULTIPLIED BY YEARS OF SERVICE (YOS) MULTIPLIED BY ANNUAL BASE PAY (ABP). EXAMPLE: THE CALCULATION FOR A STAFF SERGEANT WITH 12 YEARS OF SERVICE WILL BE 20 PERCENT MULTIPLIED BY 12 YOS (BASED ON ARMED FORCES ACTIVE DUTY BASE DATE) MULTIPLIED BY THE ANNUAL BASIC PAY RATE OF 41,242 DOLLARS, WHICH EQUALS 98,981 DOLLARS (.2 X 12 X 41,242 DOLLARS EQUALS 98,981 DOLLARS). AN ELIGIBLE STAFF SERGEANT WITH 12 YEARS OF SERVICE WOULD RECEIVE 98,981 DOLLARS BEFORE TAXES.
- B. PAYMENTS AWARDED UNDER THIS PROGRAM WILL BE PAID IN A SINGLE LUMP, TAXABLE, SUM.
4. RETIREMENT IMPLICATIONS. A MARINE WHO IS PAID VSP AND WHO LATER QUALIFIES FOR RETIRED OR RETAINER PAY SHALL HAVE DEDUCTED FROM EACH PAYMENT OF SUCH RETIRED OR RETAINER PAY A MONTHLY SCHEDULED AMOUNT UNTIL THE TOTAL AMOUNT DEDUCTED FROM SUCH RETIRED OR RETAINER PAY IS EQUAL TO THE TOTAL AMOUNT OF VSP PREVIOUSLY PAID.
5. COORDINATING INSTRUCTIONS
- A. SUBMIT VSP REQUESTS BY AA FORM VIA THE CHAIN OF COMMAND TO CMC (MMSR-3) PER REF (B) DURING THE SUBMISSION WINDOW. REQUESTS FOR A WAIVER OF OTHER SERVICE OBLIGATIONS REQUIRE JUSTIFICATION AND ENDORSEMENT BY THE FIRST GENERAL OFFICER IN THE CHAIN OF COMMAND. EACH APPLICATION WILL BE CONSIDERED CASE-BY-CASE BASED ON FORCE

EXHIBIT 2

AR0981

Appx4562

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM OLAS BEE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendants.

Case No. 21-1970
(Senior Judge Loren A. Smith)

**PLAINTIFF WILLIAM OLAS BEE'S MOTION FOR JUDGMENT ON THE
ADMINISTRATIVE RECORD**

Dated: March 16, 2022

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Counsel for Plaintiff William Olas Bee

In November 2010 the Marine Corps assigned Plaintiff to a temporary position with the Navy at the Navy Field Medical Training Battalion (“FMTB”) in Camp Johnson, North Carolina. In this role, Plaintiff worked as a “military instructor” for Navy medical and religious personnel, which was outside his Marine Corps Primary Military Occupational Specialties (“PMOS”) first as a Rifleman and then as an Infantry Unit Leader. While stationed at the FMTB, Plaintiff continued to receive medical treatment for his TBI and PTSD.

In late 2012, Plaintiff faced a difficult choice. He was approaching his end of active service and, despite his TBI and PTSD diagnoses, he was never referred for disability processing. Yet Plaintiff’s TBI and PTSD symptoms meant he could no longer safely or reliably perform the duties of his Infantry Unit Leader rating, making it unrealistic for Plaintiff to reenlist. In the end, Plaintiff took the only option he felt was available—volunteering for a then-existing Marine Corps program which paid Marines of Plaintiff’s rank a lump sum to separate early from the Marine Corps.

In January 2013, a few months prior to his April 1, 2013 separation date, Plaintiff received comprehensive TBI and PTSD evaluations. Based on these evaluations, in October 2013, Plaintiff received a 70% disability rating from the VA for TBI, postconcussion syndrome, and cognitive impairment, and a separate 70% disability rating for PTSD, general anxiety disorder, panic disorder with agoraphobia, and major depressive disorder. AR 104–09. Plaintiff’s February 2013 final military separation physical noted that he suffered from, among other things, TBI, delayed PTSD, intermittent back, ankle, shoulder, and knee pain, joint swelling, abnormal deep tendon reflexes, hearing loss, tinnitus, dizziness, vertigo, lightheadedness, memory lapses, night sweats, anxiety, headaches, and depression—yet found him fit to be released without limitations. AR 99.

In April 2018, after years of struggling with his TBI and PTSD-related symptoms, Plaintiff sought correction of his military records from the Board to reflect medical retirement. In the brief

Appendix

AR1032

Appx4613



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON DC 20350-3000

MCO 1200.17
C 469
23 MAY 2008

MARINE CORPS ORDER 1200.17

From: Commandant of the Marine Corps
To: Distribution List

Subj: MILITARY OCCUPATIONAL SPECIALTIES (MOS) MARINE CORPS MANUAL (SHORT
TITLE: MOS Manual)

Ref: (a) MCO 1200.15B, MOS System Modification Process

Encl: (1) MOS Manual

Report Required: DOD Enlisted/Officer Occupational Conversion Table (Report
Control Symbol DD-1200-02) (EXTERNAL RCS DD-P&R 959),
par. 0006.3

1. Situation. Each year the Marine Corps Human Resource Development Process is synchronized through publication of this Order. This Order defines occupational specialties found on tables of organization and otherwise provides information that will enable the Marine Corps to carry out its assigned mission to organize, train, assign, and manage the force. This revision has been conducted in accordance with the reference and it contains substantial changes and must be scrutinized carefully. OccFld 3i is renamed Distribution Management and a new enlisted OccFld 48 has been created. MOS 0143 has changed to MOS 4821. There are new MOSs in OccFlds 02, 30, and 44 and MOS are deleted from OccFlds 28, 35, 44, 55 and 64. Grade structure changes are made in OccFlds 28, 55, 61 and 62. Other significant changes are made in OccFlds 01, 03, 04, 06, 09, 11, 18, 26, 27, 31, 34, 43, 58, 60, 62, 66, 73 and 80.

2. Cancellation. MCBul 1200 of 28 Mar 2007 (canc: Apr 2008).

3. Mission. The Total Force Structure Management System and the Marine Corps Total Force System will be updated using common MOS codes from this enclosure (1) to this Order to accurately provide the operating forces the inventory of Marines trained in the required skills to conduct unit missions.

4. Execution. Commanding Officers of schools and all personnel associated with the Marine Corps Occupational System shall familiarize themselves with enclosure (1) to this Order and make all MOS changes as summarized in chapters 2 and 4, Officer/Enlisted Conversion Guidance, and as further guided by the reference and the Deputy Commandant of the Marine Corps, Manpower and Reserve Affairs.

5. Administration and Logistics. The MOS and chart will be distributed in April/May 2008. Recommendations for improving or modifying the Marine Corps Occupational System are invited. Refer to the Introduction to enclosure (1) for the procedure to submit recommended changes/modifications.

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

3110

MOS MANUAL

MCO 1200.17

anti-armor operations, and tactical vehicle operations. They provide medium and heavy anti-armor fire in support of the infantry battalion, LAR battalion, tank battalion, and the MAGTF. They are located in the anti-armor platoon within the weapons company of the infantry battalions and LAR battalions, the TOW platoons of the tanks battalions, and the TOW Company of the 4th Tank Battalion (MARFORRES). Non-commissioned officers are assigned as gunners and squad leaders.

b. Prerequisites

- (1) Must possess a GT score of 100 or higher.
- (2) Must have normal color vision, and vision of 20/200, correctable to 20/20.
- (3) Must have a past driving record appropriate for issue of SF-46 as evidenced by a search of the National Driver Register.
- (4) Must possess the psychological and physiological qualifications required for licensing as a Government motor vehicle operator (see MCO 11240.66 and TM-11240-15/3).

c. Requirements. Complete the Anti-Tank Assault Guided Missileman Course at Infantry Training Battalion, School of Infantry, Training Command, Camp Pendleton, CA/Camp Lejeune, NC, or upon completion of appropriate MOJT.

d. Duties. For a complete listing of duties and tasks, refer to NAVMC Directive 3500-87, Training and Readiness Manual.

e. Related DOT Classification/DOT Code. Anti-Tank Assault Gunner.

f. Related Military Skill

- (1) Assaultman, 0351.
- (2) LAV Crewman, 0313.
- (3) Tank Crewman, 1812.

16. MOS 0369, Infantry Unit Leader (MGySgt to SSgt) PMOS

a. Summary. The infantry unit leader assists commanders and operations officers in the training, deployment and tactical employment of rifle, weapons, LAR, and antitank platoons/companies and infantry, and LAR battalions, are proficient in all the infantry weapons systems. They supervise and coordinate the preparation of personnel, weapons and equipment for movement and combat, the establishment and operation of unit command posts, the fire and movement between tactical units, the fire of supporting arms, and the unit resupply and casualty evacuation effort. As a platoon sergeant or section leader in the rifle, scout sniper, weapons, heavy machinegun, LAR, and anti-armor platoons, he advises the platoon commander on all issues of discipline, morale and welfare.

b. Prerequisites. See requirements.

c. Requirements. Complete the Infantry Unit Leader Course at SOI, Camp Pendleton, CA, or SOI, Camp Lejeune, NC, or have held either MOS 0311, 0313, 0331, 0341, 0351 or 0352 upon selection to staff sergeant.

d. Duties. For a complete listing of duties and tasks, refer to NAVMC Directive 3500-87, Training and Readiness Manual.

USMC FITNESS REPORT (1610)
NAVMC 10835A (Rev. 1-01) (WN 3.0)
PREVIOUS EDITIONS WILL NOT BE USED

DO NOT STAPLE THIS FORM

COMMANDANT'S GUIDANCE

The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.

A. ADMINISTRATIVE INFORMATION

1. Marine Reported On:

a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS
BEE	WILLIAM	O	[REDACTED]	SGT	20050301	0311	8411

2. Organization:

a. MCC	b. RUC	c. Unit Description
988	80001	MCRS PITTSBURGH

3. Occasion and Period Covered:

a. OCC	b. From	To	c. Type	4. Duty Assignment (descriptive title):
AN	20050301	20050331	N	CANVASSING RECRUITER

5. Special Case:

a. Adverse <input type="checkbox"/>	b. Not Observed <input checked="" type="checkbox"/>	c. Extended <input type="checkbox"/>
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6. Marine Subject Of:

a. Commendatory Material <input type="checkbox"/>	b. Derogatory Material <input type="checkbox"/>	c. Disciplinary Action <input type="checkbox"/>
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7. Recommended For Promotion:

a. Yes <input type="checkbox"/>	b. No <input type="checkbox"/>	c. N/A <input checked="" type="checkbox"/>
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8. Special Information:

a. QUAL	N	N	d. HT(in.)	68	g. Reserve Component	
b. PFT	A247	e. WT	160	h. Future Use		
c. Status		f. Body Fat		i. Future Use		

9. Duty Preference:

a. Code	b. Descriptive Title
1st	V13 1/3 3RDMARDIV KANEOHE BAY HI
2nd	1GR 1ST LT ARMORED RECONBN CAMPEN
3rd	TNN UN IRAQ-KUWAIT OBSERVER

10. Reporting Senior:

a. Last Name	b. Init.	c. Service	d. SSN	e. Grade	f. Duty Assignment
SHERMAN	MD	USMC	[REDACTED]	MAJ	COMMANDING OFFICER

11. Reviewing Officer:

a. Last Name	b. Init.	c. Service	d. SSN	e. Grade	f. Duty Assignment
FOERSCH	WJ	USMC	[REDACTED]	COL	COMMANDING OFFICER

B. BILLET DESCRIPTION

- Directly responsible to RSS NCOIC.
- Primary duties include canvassing, screening and selling prospective applicants for enlistment in accordance with systematic recruiting.
- Motivating and mentally/physically preparing poolees for recruit training.
- Effectively utilizing programs.
- Establishing professional working relationships with members of the community.

C. BILLET ACCOMPLISHMENTS

[Empty section for accomplishments]

USMC FITNESS REPORT (1610) NAVMC 10835A (Rev. 1-01) (VN 3.1) PREVIOUS EDITIONS WILL NOT BE USED							DO NOT STAPLE THIS FORM	
COMMANDANT'S GUIDANCE								
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>								
A. ADMINISTRATIVE INFORMATION								
1. Marine Reported On:								
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DPR	g. PMOS	h. BILMOS	
BEE	WILLIAM	O	[REDACTED]	SGT	20050301	0311	0311	
2. Organization:								
a. MCC	b. RUC	c. Unit Description						
V16	12160	COMPANY A, BATTALION LANDING TEAM 1/6, 24TH MEU, II MEF						
3. Occasion and Period Covered:								
a. OCC	b. From	To	c. Type					
AN	20071218	20080331	N INFANTRY SQUAD LEADER					
4. Duty Assignment (descriptive title):								
5. Special Case:								
a. Adverse <input type="checkbox"/>			b. Not Observed <input type="checkbox"/>			c. Extended <input type="checkbox"/>		
6. Marine Subject Of:								
a. Commendatory Material <input type="checkbox"/>			b. Derogatory Material <input type="checkbox"/>			c. Disciplinary Action <input type="checkbox"/>		
7. Recommended For Promotion:								
a. Yes <input checked="" type="checkbox"/>			b. No <input type="checkbox"/>			c. N/A <input type="checkbox"/>		
B. Special Information:								
a. QUAL		N N	d. HT(in.)	67	g. Reserve Component		9. Duty Preference:	
b. PFT		A251	e. WT	171	h. Future Use		a. Code	b. Descriptive Title
c. Status			f. Body Fat		i. Future Use		1st	V16 1ST BATTALION, 6TH MARINES
							2nd	V26 2D BATTALION, 6TH MARINES
							3rd	V36 3D BATTALION, 6TH MARINES
10. Reporting Senior:								
a. Last Name		b. Initc. Service		d. SSN	e. Grade	f. Duty Assignment		
TREPTOW		JW USMC		[REDACTED]	1STLT	PLATOON COMMANDER		
11. Reviewing Officer:								
a. Last Name		b. Initc. Service		d. SSN	e. Grade	f. Duty Assignment		
DYNAN		SP USMC		[REDACTED]	CAPT	COMPANY COMMANDER		
B. BILLET DESCRIPTION								
<p>Train to standard all squad automatic weapon gunners, assistant gunners and riflemen on standard tactics, techniques and procedures employed by a Marine Rifle Squad in the offense and defense.</p> <ul style="list-style-type: none"> -Prepare for and execute the training schedule. -Execute and supervise basic daily routine for the squad. -Rehearse and refine platoon SOPs in accordance with company SOP. Employ squad in a tactical environment. Conduct inspections of assigned Marines to ensure proper health and welfare and also accountability of assigned weapons and SL-3 gear. -Engage Marines in a physical training program to ensure they meet or exceed the Marine Corps minimum requirements of height/weight standards and physical performance standards. 								
C. BILLET ACCOMPLISHMENTS								
<ul style="list-style-type: none"> - Served as one of the primary instructors for (50) Marines from the BLT's Headquarters and Service Company on VCP and ECP operations. -Mentored and led his squad, ensuring their growth professionally, in both technical and tactical proficiency. - Effectively led his squad through both day and night live-fire squad attacks, which demonstrated proficiency of the unit in Fire and Movement, Call for Fire, CASEVAC, and Close Air Support procedures. Prepared his Marines for deployment to Afghanistan, ensuring their readiness medically and administratively. 								
AR1281								

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O		AN	20071218 20080331
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources; improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher, selflessly imparts expertise to subordinates, peers, and seniors.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

AR1282

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI		d. SSN	
a. OCC		b. From		c. To			
BEE		WILLIAM		O		AN 20071218 20080331	
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale. Ensuring mission accomplishment even in the most difficult circumstances.				N/O
A	B	C <input checked="" type="checkbox"/>	D	E	F	G	H
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. <u>Creating an atmosphere tolerant of mistakes in the course of learning.</u>							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRO's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.				N/O
A	B	C <input checked="" type="checkbox"/>	D	E	F	G	H
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to tenets of the Marine Corps core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are tone-setting. An inspiration to subordinates, peers, and seniors. Remarkable dedication to improving self and others.				N/O
A	B	C <input checked="" type="checkbox"/>	D	E	F	G	H
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that <u>Marines take care of their own.</u>							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Instills and/or reinforces a sense of responsibility among junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby correcting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto <i>Mission first, Marines always</i> , into action.				N/O
A	B	C <input checked="" type="checkbox"/>	D	E	F	G	H
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.				N/O
A	B	C <input checked="" type="checkbox"/>	D	E	F	G	H
JUSTIFICATION:							
AR1283							

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O		AN	20071218	20080331

G. INTELLECT AND WISDOM

1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups at military societies; and involvement in learning through new technologies.

<p>ADV Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.</p>	<p>PMF outlook extends beyond MOS and requires education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.</p>	<p>Dedicated to life-long learning. As a result of active and continuous efforts, widely recognized as an intellectual leader in professionally related topics. Make time for study and takes advantage of all resources and programs. Introduces new and creative approaches to services issues. Engages in a broad spectrum of forums and dialogues.</p>	<p>N/O</p>
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A B C D E F G H

2. DECISION MAKING ABILITY. Viable and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.

<p>ADV Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.</p>	<p>Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast, willing to make difficult decisions.</p>	<p>Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.</p>	<p>N/O</p>
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A B C D E F G H

3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.

<p>ADV Majority of judgments are measured, circumspect, relevant and correct.</p>	<p>Decisions are consistent and uniformly correct, tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.</p>	<p>Decisions reflect exceptional insight and wisdom beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.</p>	<p>N/O</p>
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A B C D E F G H

JUSTIFICATION:

H. FULFILLMENT OF EVALUATION RESPONSIBILITIES

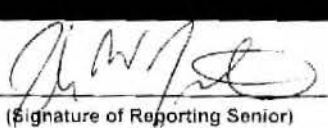






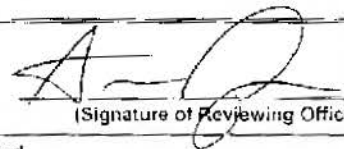
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, uninflated, and timely evaluations.

<p>ADV Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.</p>	<p>Prepared uninflated evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few if any, reports were returned by RO or HQMC for administrative errors. Section Cs were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the marking given.</p>	<p>No reports submitted late. No reports returned by either RC or HQMC for administrative correction or inflated markings. No subordinate reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO nonconcurrent with all inflated reports.</p>	<p>N/O</p>
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A B C D E F G H

JUSTIFICATION:

AR1284

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O		AN	20071218	20080331
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>MRO assumed leadership of his squad late in the deployment work-up due to his attendance of Infantry Squad Leader's course. MRO immediately immersed himself in learning his squad and testing their ability to function as a unit. MRO's effectiveness as an instructor and ability to communicate information has noticeably improved the proficiency of his squad while operating in the field. MRO is proactive with training, and often provides suggestions to leadership for platoon training. Shows enormous potential for leading subordinates and mentoring junior NCOs. MRO is PME complete. Promote with peers.</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				 (Signature of Reporting Senior)		20080331 (Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement				_____ (Signature of Marine Reported On)		_____ (Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient			2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur			
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.	DESCRIPTION		COMPARATIVE ASSESSMENT			
	THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/>	0 			
	ONE OF THE FEW	<input type="checkbox"/>	0 			
	EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/>	3 			
	ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input checked="" type="checkbox"/>	8 			
	A QUALIFIED MARINE	<input type="checkbox"/>	11 			
UNSATISFACTORY	<input type="checkbox"/>	6 				
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.						
-Steady improvement throughout reporting period in both performance and proficiency. -Led and trained a newly formed squad. Actions resulted in building a cohesive and efficient unit. -Consummate mentor; SNM seeks every opportunity to teach and train his squad. -Promote with peers and continue to educate.						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				 (Signature of Reviewing Officer)		20080331 (Date in YYYYMMDD format)
6. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement				_____ (Signature of Marine Reported On)		_____ (Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED <input checked="" type="checkbox"/> YES						

USMC FITNESS REPORT (1610)								DO NOT STAPLE THIS FORM	
NAVMC 10835A (Rev. 4-03)									
PREVIOUS EDITIONS WILL NOT BE USED								COMMANDANT'S GUIDANCE	
FITREP ID #771316 (T A-PES 5.2.1)									
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXX	SGT	20050301	0311	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCC	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
CH	20080401	20081130	C	SQUAD LEADER					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. DUAL	NN	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	B 231	e. WT	155	h. Future Use	a. Code	b. Descriptive Title			
c. Status		f. Body Fat		i. Future Use	1st	V16	1ST BATTALION 6TH MARINES		
					2nd	V26	2ND BATTALION 6TH MARINES		
					3rd	V36	3RD BATTALION 6TH MARINES		
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
TREPTOW	JW	USMC	XXXX	1STLT	PLATOON COMMANDER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
DYNAN	SP	USMC	XXXX	MAJ	COMPANY COMMANDER				
B. BILLET DESCRIPTION									
<p>-Train to standard all squad automatic weapon gunners, assistant gunners and riflemen on standard tactics, techniques and procedures employed by a Marine Rifle Squad in the offense and defense.</p> <p>-Prepare for and execute the training schedule.</p> <p>-Execute and supervise basic daily routine for the squad.</p> <p>-Rehearse and refine platoon SOPs in accordance with company SOP.</p> <p>-Employ squad in a tactical environment.</p> <p>-Conduct inspections of assigned Marines to ensure proper health and welfare and also accountability of assigned weapons and SL-3 gear.</p> <p>-Engage Marines in a physical training program to ensure they meet or exceed the Marine Corps minimum requirements of height/weight standards and physical performance standards.</p>									
C. BILLET ACCOMPLISHMENTS									
<p>-Ensured accountability as well as tactical readiness of all personnel and gear for his squad.</p> <p>-Controlled fires of his squad during over 25 engagements with enemy forces.</p> <p>-Led his squad on over 90 ambush, security, and reconnaissance patrols as part of Operation Asada Wosa.</p> <p>-Conducted census of over 110 local families, earning the trust of the local populace and developing lasting relationships with local leaders.</p> <p>-Successfully employed his squad during multiple 24 and 48-hour overwatch missions to disrupt the enemy's battle rhythm and deny them freedom of movement.</p> <p>-Served as Company Sergeant of the Guard at the Company CP.</p> <p>-Served as Platoon Sergeant during the final 3 weeks of preparation to redeploy from Afghanistan.</p> <p>-Successfully redeployed his squad from Afghanistan.</p>									

AR1286

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE		WILLIAM	O	XXXX	CH	20080401	20081130
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental acuity and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.1) FITREP ID #771316 PAGE 2 OF 6							

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXXX	CH	20080401	20081130

F. LEADERSHIP

1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.

ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.	N/O
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<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input checked="" type="checkbox"/> D	<input type="checkbox"/> E	<input type="checkbox"/> F	<input type="checkbox"/> G	<input type="checkbox"/> H
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2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. *Creating an atmosphere tolerant of mistakes in the course of learning.*

ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinates and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.	N/O
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<input type="checkbox"/> A	<input type="checkbox"/> B	<input checked="" type="checkbox"/> C	<input type="checkbox"/> D	<input type="checkbox"/> E	<input type="checkbox"/> F	<input type="checkbox"/> G	<input type="checkbox"/> H
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3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.

ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are time-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.	N/O
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<input type="checkbox"/> A	<input type="checkbox"/> B	<input checked="" type="checkbox"/> C	<input type="checkbox"/> D	<input type="checkbox"/> E	<input type="checkbox"/> F	<input type="checkbox"/> G	<input type="checkbox"/> H
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4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.

ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Infills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto <i>Mission first, Marines always</i> , into action.	N/O
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<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input checked="" type="checkbox"/> D	<input type="checkbox"/> E	<input type="checkbox"/> F	<input type="checkbox"/> G	<input type="checkbox"/> H
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5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.

ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.	N/O
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<input type="checkbox"/> A	<input type="checkbox"/> B	<input checked="" type="checkbox"/> C	<input type="checkbox"/> D	<input type="checkbox"/> E	<input type="checkbox"/> F	<input type="checkbox"/> G	<input type="checkbox"/> H
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JUSTIFICATION:

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To	
BEE		WILLIAM		O	XXXXX	CH	20080401	20081130
G. INTELLECT AND WISDOM								
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.								
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.		PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.			Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.								
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.		Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.			Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.								
ADV	Majority of judgments are measured, circumspcct, relevant and correct.		Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.			Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:								
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES								
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, uninfated, and timely evaluations.								
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.		Prepared uninfated evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section Cs were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.			No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:								

1. Marine Reported On:				2. Occasion and Period Covered:																	
a. Last Name		b. First Name		c. MI		d. SSN															
a. OCC		b. From		c. To																	
BEE		WILLIAM		O		XXXX															
CH		20080401		20081130																	
I. DIRECTED AND ADDITIONAL COMMENTS																					
Directed Comment. SECT A, Item 3c: During this period MRO was engaged in direct combat operations in Garmsir, Southern Helmand, Afghanistan in support of Operation ENDURING FREEDOM from 080427 to 080905. My best squad leader. MRO led with a calm authority that drew focused action from his Marines through thirty-five days of constant contact with enemy forces during Operation Asada Wosa. MRO was proactive when planning squad and platoon missions, consistently offering sound suggestions and schemes of maneuver for each coming week's patrol schedule. Over the three month long hold and build phase of the operation, MRO demonstrated the ability to earn the trust and good standing of the local populace well beyond that of his peers. MRO truly came into his own as he tirelessly guided his Marines through the full spectrum of offensive and defensive combat operations, and the squad's proficiency stood as a testament to his efforts. When my platoon sergeant was required to serve as the																					
J. CERTIFICATION																					
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronic Signature of: JOHN W TREPTOW (Signature of Reporting Senior)		20090424 (Date in YYYYMMDD format)															
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Signature of Marine Reported On)															
K. REVIEWING OFFICER COMMENTS																					
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient				2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur																	
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.		<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>DESCRIPTION</th> <th>COMPARATIVE ASSESSMENT</th> </tr> </thead> <tbody> <tr> <td>THE EMINENTLY QUALIFIED MARINE</td> <td><input type="checkbox"/> 0</td> </tr> <tr> <td>ONE OF THE FEW</td> <td><input type="checkbox"/> 1</td> </tr> <tr> <td>EXCEPTIONALLY QUALIFIED MARINES</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE</td> <td><input checked="" type="checkbox"/> 11</td> </tr> <tr> <td>A QUALIFIED MARINE</td> <td><input type="checkbox"/> 15</td> </tr> <tr> <td>UNSATISFACTORY</td> <td><input type="checkbox"/> 10</td> </tr> <tr> <td></td> <td><input type="checkbox"/> 8</td> </tr> <tr> <td></td> <td><input type="checkbox"/> 4</td> </tr> </tbody> </table>		DESCRIPTION	COMPARATIVE ASSESSMENT	THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/> 0	ONE OF THE FEW	<input type="checkbox"/> 1	EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/> 5	ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input checked="" type="checkbox"/> 11	A QUALIFIED MARINE	<input type="checkbox"/> 15	UNSATISFACTORY	<input type="checkbox"/> 10		<input type="checkbox"/> 8		<input type="checkbox"/> 4
DESCRIPTION	COMPARATIVE ASSESSMENT																				
THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/> 0																				
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EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/> 5																				
ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input checked="" type="checkbox"/> 11																				
A QUALIFIED MARINE	<input type="checkbox"/> 15																				
UNSATISFACTORY	<input type="checkbox"/> 10																				
	<input type="checkbox"/> 8																				
	<input type="checkbox"/> 4																				
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.																					
Concur with RS' remarks. During the reporting period and over the course of my observation of this Marine, I have had the privilege of watching him mature as a leader and NCO. His actions and leadership in combat, met and exceeded my expectations for a Sgt of his experience. Courageous, methodical, and reserved; MRO's leadership carried his squad through over 30 engagements with the enemy and four months of counterinsurgency operations. Amongst his peers he was one of the top five squad leaders out of 12 and is in the top third of my RO profile. Promote and retain.																					
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronic Signature of: SEAN P DYNAN (Signature of Reviewing Officer)		20090506 (Date in YYYYMMDD format)															
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Signature of Marine Reported On)															
L. ADDENDUM PAGE																					
ADDENDUM PAGE ATTACHED: <input checked="" type="checkbox"/> YES																					
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.1)				FITREP ID #771316		PAGE 5 OF 5															

USMC FITNESS REPORT NAVMC 10835A (Rev. 4-03)						DO NOT STAPLE THIS FORM			
ADDENDUM PAGE									
A. PURPOSE									
1. Marine Reported On:						2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	e. Grade		a. OCC	b. From To
BEE		WILLIAM		O	XXXXX	SGT		CH	20080401 20081130
3. Purpose:									
a. Continuation of Comments Justification Section RO		b. Accelerated Promotion Justification		c. Adverse Report MRO Statement 3rd Officer Sighiter		d. Admin Review	e. Supplemental Material	f. HQMC Use	
<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B. TEXT									
<p>during preparations for redeployment, MRO assumed his duties and responsibilities for three crucial weeks. During this time, Sgt Bee readily demonstrated the maturity and work ethic I have come to expect from a seasoned platoon sergeant. MRO is a patient and knowledgeable leader that will excel in any training command in an instructor capacity. Recommend retention and assignment to billets of increased responsibility. Promote with peers.</p>									
C. SUBMITTED BY									
1. a. Last Name		b. First Name		c. MI	2. SSN	3. Service		4. Grade	
TREPTOW		JOHN		W	XXXXX	USMC		1STLT	
Electronically signed by:									
JOHN W TREPTOW						2 0 0 9 0 4 2 4			
Signature						(Date in YYYYMMDD format)			
D. GENERAL/SENIOR OFFICER ADVERSE REPORT SIGHTING									
1. a. Last Name		b. First Name		c. MI	2. SSN	3. Service		4. Grade	
5. Title									
						[][][][][][][][][]			
						(Date in YYYYMMDD format)			
Signature									
(T A-PES 5.2.1)			FITREP ID #771316			PAGE 1 OF 1			

AR1291

USMC FITNESS REPORT (1510) NAVMC 10835A (Rev. 4-03) PREVIOUS EDITIONS WILL NOT BE USED FITREP ID #788564 (T A-PES 5.2.1)								DO NOT STAPLE THIS FORM	
COMMANDANT'S GUIDANCE									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXXX	SGT	20050301	0311	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	ALPHA COMPANY, 1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCC	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
CH	20081201	20090326	N	PLATOON SERGEANT					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. DUAL	NN	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	NREQ	e. WT	158	h. Future Use	a. Code	b. Descriptive Title			
c. Status		f. Body Fat		i. Future Use	1st	Y26	OVERSEAS WITH DEPENDENTS		
					2nd	Y34	I-I DUTY - 1ST DISTRICT		
					3rd	Y35	I-I DUTY - 4TH DISTRICT		
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
MCKINLEY	TM	USMC	XXXX	2NDLT	PLATOON COMMANDER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
HAVENS	CA	USMC	XXXX	CAPT	COMPANY COMMANDER				
B. BILLET DESCRIPTION									
<ul style="list-style-type: none"> -Execute and supervise the basic daily routine of the platoon in garrison and combat. -Prepare for, and execute the training schedule, maximizing all training opportunities. -Develop lesson plans and training scenarios to enhance teamwork within the platoon. -Develop and execute performance based training on ITS, MBST and battle drill guide. -Employ the platoon in a tactical environment on the order or in the absence of the platoon commander. -Ensure accountability and serviceability of all platoon gear and weapons. -Ensure accountability and well-being of all platoon personnel and attachments. -Supervise squad leader's counseling programs and assist platoon commander in counseling and evaluating squad leaders. Evaluate Marines and recommend semi-annual Pro/Con marks. -Advise platoon commander on employment of all personnel weapons within the platoon. -Ensure platoon recall and administrative data is up to date. 									
C. BILLET ACCOMPLISHMENTS									
<ul style="list-style-type: none"> -Maintain accountability of 49 Marines and continually tracked, logged and monitored their training through three months of the pre-deployment work-up. -Developed and executed a three month training schedule based upon the Training and Readiness Manual's Individual Training Events. -Accurately maintained accountability of 55 weapon systems and 139 optical and night vision devices valued at a worth of over 120,000 dollars. -Developed tracking spreadsheets on the platoon's weapons, training and personnel data that increased the platoon's overall proficiency. -Successfully lead the platoon through three field operations. -Mentored and developed the Marines of the platoon by conducting weekly personal military education classes. -Served as the primary company instructor on the M203 weapon system. -Improved the overall physical performance of the platoon by increasing the platoon's physical fitness test average by 17 points. 									

AR1292

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE		WILLIAM	O	XXXX	CH	20081201	20090326
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.		Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.		Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.		Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.		True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher, selflessly imparts expertise to subordinates, peers, and seniors.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.		Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.		Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.		Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.		Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.		Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.		Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.1)				FITREP ID #788564		PAGE 2 OF 6	

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	CH	20081201 20090326

F. LEADERSHIP

1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.

ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.	N/O
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A <input type="checkbox"/>	B <input type="checkbox"/>	C <input checked="" type="checkbox"/>	D <input type="checkbox"/>	E <input type="checkbox"/>	F <input type="checkbox"/>	G <input type="checkbox"/>	H <input type="checkbox"/>
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2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.

ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.	N/O
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A <input type="checkbox"/>	B <input type="checkbox"/>	C <input checked="" type="checkbox"/>	D <input type="checkbox"/>	E <input type="checkbox"/>	F <input type="checkbox"/>	G <input type="checkbox"/>	H <input type="checkbox"/>
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3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.

ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are time-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.	N/O
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A <input type="checkbox"/>	B <input type="checkbox"/>	C <input checked="" type="checkbox"/>	D <input type="checkbox"/>	E <input type="checkbox"/>	F <input type="checkbox"/>	G <input type="checkbox"/>	H <input type="checkbox"/>
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4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.

ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Infills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto: <i>Mission first, Marines always</i> , into action.	N/O
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A <input type="checkbox"/>	B <input type="checkbox"/>	C <input checked="" type="checkbox"/>	D <input type="checkbox"/>	E <input type="checkbox"/>	F <input type="checkbox"/>	G <input type="checkbox"/>	H <input type="checkbox"/>
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5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.

ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.	N/O
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A <input type="checkbox"/>	B <input type="checkbox"/>	C <input checked="" type="checkbox"/>	D <input type="checkbox"/>	E <input type="checkbox"/>	F <input type="checkbox"/>	G <input type="checkbox"/>	H <input type="checkbox"/>
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JUSTIFICATION:

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	CH	20081201 20090326
G. INTELLECT AND WISDOM							
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commander's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.							
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.		PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.		Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.							
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.		Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast, willing to make difficult decisions.		Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.							
ADV	Majority of judgments are measured, circumspect, relevant and correct.		Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.		Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES							
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.							
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.		Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section G's were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.		No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.		N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXX	CH	20081201	20090326
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>-MRO impressed me as a calm, intelligent, knowledgeable and highly competent Non-Commissioned Officer.</p> <p>-This reporting period represents his first experience serving in a Staff Non-Commissioned Officer billet, a billet which he filled above and beyond expectation.</p> <p>-MRO contributed greatly to the platoon's training and enhanced its overall performance.</p> <p>-Will no doubt excel at appropriate level resident or non-resident school.</p> <p>-Recommended that MRO be retained and promoted with peers.</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronic Signature by: TIMOTHY M MCKINLEY (Signature of Reporting Senior)		20090430 (Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement (Signature of Marine Reported On)		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input type="checkbox"/> Sufficient <input checked="" type="checkbox"/> Insufficient		2. EVALUATION: <input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur				
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.	DESCRIPTION		COMPARATIVE ASSESSMENT			
	THE EMINENTLY QUALIFIED MARINE					
	ONE OF THE FEW					
	EXCEPTIONALLY QUALIFIED MARINES					
	ONE OF THE MANY HIGHLY QUALIFIED					
	PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE					
A QUALIFIED MARINE						
UNSATISFACTORY						
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.						
<p>5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.</p> <p>Electronic Signature by: CARL A HAVENS (Signature of Reviewing Officer)</p> <p>20090430 (Date in YYYYMMDD format)</p>						
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement (Signature of Marine Reported On)		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.1) FITREP ID #788564 PAGE 5 OF 5 AR1296						

USMC FITNESS REPORT (1610) NAVMC 10835A (Rev. 4-03) PREVIOUS EDITIONS WILL NOT BE USED FITREP ID #1012113 (T A-PES 5.2.3.8)								DO NOT STAPLE THIS FORM	
COMMANDANT'S GUIDANCE									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXX	SGT	20050301	0311	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	ALPHA COMPANY 1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCC	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
AN	20090327	20100331	C	SQUAD LEADER					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. DUAL	NN	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	B 226	e. WT	160	h. Future Use	a. Code	b. Descriptive Title			
c. Status		f. Body Fat		i. Future Use	1st	O30	EWTG PACIFIC		
					2nd	1MV	SOTG WEST		
					3rd	029	EWTG ATLANTIC		
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
MALONE	TL	USMC	XXXX	1STLT	PLATOON COMMANDER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
HAVENS	CA	USMC	XXXX	CAPT	COMPANY COMMANDER				
B. BILLET DESCRIPTION									
<p>-Train to standard all Squad Automatic Weapon Gunners, Assistant Gunners and Riflemen in standard tactics, techniques and procedures employed by a Marine Rifle Squad in the offense and defense.</p> <p>-Prepare for and execute the Platoons Training Schedule in accordance with the Company and Battalions SOP's.</p> <p>-Execute and supervise the platoons basic daily routine ensuring accountability is maintained and reported as required.</p> <p>-Rehearse and refine the Platoon SOP's in accordance with the Company SOP.</p> <p>-Conduct inspections of assigned Marines to ensure proper health and welfare as well as accountability of assigned weapons and serialized gear.</p> <p>-Prepare for and engage Marines in a physical training program to ensure the meet or exceed the Marine Corps requirements of height and weight and physical performance standards.</p> <p>-Prepare for and execute partnered combat patrols with assigned Afghan National Army.</p>									
C. BILLET ACCOMPLISHMENTS									
<p>-Assisted in the development of Platoon Level Training in preparation for deployment to Afghanistan.</p> <p>-Trained his squad in accordance with Platoon and Company TTP's ensuring a high level of proficiency was maintained.</p> <p>-Prepared and led his squad during deployment for training exercises at Fort A.P. Hill and Enhanced Mojave Viper.</p> <p>-Assisted the Platoon Sergeant during move from Camp Leatherneck to Camp Dwyer maintaining accountability of all personnel and gear.</p> <p>-Led his squad on 30 Partnered Combat Patrols during Operation Mostarak II effectively employing his organic and attached assets.</p> <p>-Effectively trained and employed assigned Afghan National Army Soldiers which aided in the COIN efforts of Task Force Leatherneck within the Platoons AO.</p> <p>-Conducted census of 100 Afghan Nationals identifying multiple elders and key leaders.</p> <p>-Conducted 4 successful JFO to JTAC briefs while in contact with enemy forces.</p>									

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM	O	XXXXX	AN	20090327 20100331
D. MISSION ACCOMPLISHMENT						
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.						
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.			N/O
A	B	C	D	E	F	G H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.						
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.			N/O
A	B	C	D	E	F	G H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
JUSTIFICATION:						
E. INDIVIDUAL CHARACTER						
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.						
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.			N/O
A	B	C	D	E	F	G H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.						
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.			N/O
A	B	C	D	E	F	G H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.						
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.			N/O
A	B	C	D	E	F	G H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
JUSTIFICATION:						
E-2: ON 8 APRIL 2010, SGT BEE'S SQUAD ESTABLISHED A BLOCKING POSITION AND WERE ENGAGED FROM 4 DIFFERENT DIRECTIONS BY VERY EFFECTIVE FIRE. HE REMAINED CALM AND DIRECTED HIS SQUAD, AND HIS DEMEANOR BOLSTERED THE CONFIDENCE OF HIS MARINES. WHILE RETURNING TO BASE AFTER THIS ENGAGEMENT, HIS SQUAD WAS FIRED UPON AND TOOK ONE CASUALTY. HE SINGLE HANDEDLY COORDINATED THE CASEVAC AND ACTIONS ON THE ENEMY POSITION.						
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.3.8) FITREP ID #1012113 PAGE 2 OF 6						

AR1298

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	AN	20090327 20100331
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are time-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Instills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto: <i>Mission First, Marines always</i> , into action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:											
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To								
BEE		WILLIAM		O	XXXX	AN	20090327 20100331								
G. INTELLECT AND WISDOM															
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commandant's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.															
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.					N/O							
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input checked="" type="checkbox"/>		E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.															
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.			Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.					N/O					
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input type="checkbox"/>		E <input checked="" type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.															
ADV	Majority of judgments are measured, circumspet, relevant and correct.	Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.			Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.					N/O					
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input checked="" type="checkbox"/>		E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
JUSTIFICATION:															
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES															
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, uninfated, and timely evaluations.															
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.	Prepared uninfated evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section Cs were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.			No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.					N/O					
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input type="checkbox"/>		E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input checked="" type="checkbox"/>	
JUSTIFICATION:															

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC		b. From To
BEE		WILLIAM	O	XXXX	AN		20090327 20100331
I. DIRECTED AND ADDITIONAL COMMENTS							
<p>Sgt Bee is the pinnacle of a Marine Infantryman. Inspirational leader and expert manager of the Marine Rifle Squad. His ability to take on the most demanding and challenging problem, overcome all obstacles and ensure mission accomplishment is remarkable. Consistently called upon by superiors for his tactical advice. Unfailingly loyal leader who intuitively trains and passes on his broad experience and his own positive qualities to all Marines. Sgt Bee has routinely been tasked to fill billets of increased responsibility achieving outstanding results. During combat operations MRO has shown himself to be a bold and courageous leader of Infantrymen, his aggressive demeanor during the most adverse situations has truly saved and inspired the Marines in his charge. Recommended for retention and promotion. Directed Comment, Sect A, Item 3C: Combat FITREP due to MRO's participation in combat operations in Southern Afghanistan in support of OPERATION ENDURING FREEDOM. Directed Comment, CFT B/261 091103.</p>							
J. CERTIFICATION							
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically Signed by: THOMAS L MALONE (Signature of Reporting Senior)		20100417 (Date in YYYYMMDD format)	
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		_____ (Signature of Marine Reported On)	
						_____ (Date in YYYYMMDD format)	
K. REVIEWING OFFICER COMMENTS							
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient				2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur			
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.			DESCRIPTION THE EMINENTLY QUALIFIED MARINE ONE OF THE FEW EXCEPTIONALLY QUALIFIED MARINES ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE A QUALIFIED MARINE UNSATISFACTORY		COMPARATIVE ASSESSMENT 0 0 0 0 9 1 0 0 0		
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.							
<p>Sgt Bee is an outstanding and proven combat leader who has led his Marines confidently and without fear in combat. He demonstrates a clear understanding of commander's intent; takes initiative and implements solutions. His expert knowledge and tactical experience have been vital to the platoon during significant training and combat evolutions. He has trained his Marines to their maximum potential, and has also trained Afghan Forces to a higher standard. Recommend Sgt Bee be retained, promoted and assigned to billets of increased responsibility.</p>							
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically Signed by: CARL A HAVENS (Signature of Reviewing Officer)		20100429 (Date in YYYYMMDD format)	
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		_____ (Signature of Marine Reported On)	
						_____ (Date in YYYYMMDD format)	
L. ADDENDUM PAGE							
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.3.8)				FITREP ID #1012113		PAGE 5 OF 5	

USMC FITNESS REPORT (1510)								DO NOT STAPLE THIS FORM	
NAVMC 10835A (Rev. 4-03)									
PREVIOUS EDITIONS WILL NOT BE USED								COMMANDANT'S GUIDANCE	
FITREP ID #1109104 (T A-PES 5.2.4.10)									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXXX	SGT	20050301	0311	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCG	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
CH	20100401	20100823	C	SQUAD LEADER					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Special Information:									
a. QUAL	ES	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	A 226	e. WT	160	h. Status	a. Code	b. Descriptive Title			
c. CFT	NREQ	i. Body Fat		i. Future Use	1st	030	EWTG PACIFIC		
					2nd	1MV	SOI WEST		
					3rd	029	EWTG ATLANTIC		
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
MALONE	TL	USMC	XXXX	1STLT	PLATOON COMMANDER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
HAVENS	CA	USMC	XXXX	CAPT	COMPANY COMMANNER				
B. BILLET DESCRIPTION									
-Train to standard all Squad Automatic Weapon Gunners, Assistant Gunners and Riflemen in standard tactics, techniques and procedures employed by a Marine Rifle Squad in the offense and defense. -Prepare for and execute the Platoons Training Schedule in accordance with the Company and Battalions SOP's. -Execute and supervise the platoons basic daily routine ensuring accountability is maintained and reported as required. -Rehearse and refine the Platoon SOP's in accordance with the Company SOP. -Conduct inspections of assigned Marines to ensure proper health and welfare as well as accountability of assigned weapons and serialized gear. -Prepare for and engage Marines in a physical training program to ensure the meet or exceed the Marine Corps requirements of height and weight and physical performance standards.									
C. BILLET ACCOMPLISHMENTS									
-successfully completed over 50 combat patrols in Marjah, Afghanistan -Successfully led his squad through several engagements with enemy forces. -Conducted a battle damage assessment of a Special Forces raid in Marjah, Afghanistan. -Controlled air assets on several occasions while conducting aerial reconnaissance of certain areas where future patrols and operations were to occur. -Led his squad during a Company size clear of blocks 8a, 8b, and 8c in Marjah Afghanistan. -Conducted mentoring and training sessions with Afghan National Army soldiers.									

AR1902

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE		WILLIAM	O	XXXXX	CH	20100401	20100823
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental acuity and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.4.10) FITREP ID #1109104 PAGE 2 OF 6							

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	CH	20100401 20100823
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRO's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are tone-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Instills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto: <i>Mission first, Marines always</i> , into action.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI		d. SSN	
BEE		WILLIAM		O		XXXX	
				OCC		b. From To	
				CH		20100401 20100823	
G. INTELLECT AND WISDOM							
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commander's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.							
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.							
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.	Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.							
ADV	Majority of judgments are measured, circumspect, relevant and correct.	Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.	Decisions reflect exceptional insight and wisdom beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES							
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.							
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.	Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section Cs were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.				N/O
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:																										
a. Last Name		b. First Name		c. MI		d. SSN																								
BEE		WILLIAM		O		XXXX																								
				a. OCC		b. From To																								
				CH		20100401 20100823																								
I. DIRECTED AND ADDITIONAL COMMENTS																														
<p>Sgt Bee is the pinnacle of a Marine Infantryman. Inspirational leader and expert manager of the Marine Rifle Squad. His ability to take on the most demanding and challenging problem, overcome all obstacles and ensure mission accomplishment is remarkable. Consistently called upon by superiors for his tactical advice. Unfailingly loyal leader who intuitively trains and passes on his broad experience and his own positive qualities to all Marines. During combat operations MRO has shown himself to be a bold and courageous leader of Infantrymen, his aggressive demeanor during the most adverse situations has truly saved and inspired the Marines in his charge. Recommended for retention and promotion. Directed Comment, Sect A, Item 3C: Combat FITREP due to MRO's participation in combat operations in Southern Afghanistan in support of OPERATION ENDURING FREEDOM. Directed Comment, Sect A, Item 6a: MRO received the Navy and Marine Corps Achievement Medal with combat distinguishing device.</p>																														
J. CERTIFICATION																														
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically signed by: THOMAS L MALONE (Signature of Reporting Senior)		20100913 (Date in YYYYMMDD format)																								
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Signature of Marine Reported On)																								
						(Date in YYYYMMDD format)																								
K. REVIEWING OFFICER COMMENTS																														
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient				2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur																										
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.			<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>DESCRIPTION</th> <th></th> <th>COMPARATIVE ASSESSMENT</th> </tr> </thead> <tbody> <tr> <td>THE EMINENTLY QUALIFIED MARINE</td> <td><input type="checkbox"/></td> <td>0</td> </tr> <tr> <td>ONE OF THE FEW</td> <td><input type="checkbox"/></td> <td>0</td> </tr> <tr> <td>EXCEPTIONALLY QUALIFIED MARINES</td> <td><input type="checkbox"/></td> <td>0</td> </tr> <tr> <td>ONE OF THE MANY HIGHLY QUALIFIED</td> <td><input checked="" type="checkbox"/></td> <td>13</td> </tr> <tr> <td>PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE</td> <td><input type="checkbox"/></td> <td>3</td> </tr> <tr> <td>A QUALIFIED MARINE</td> <td><input type="checkbox"/></td> <td>1</td> </tr> <tr> <td>UNSATISFACTORY</td> <td><input type="checkbox"/></td> <td>0</td> </tr> </tbody> </table>		DESCRIPTION		COMPARATIVE ASSESSMENT	THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/>	0	ONE OF THE FEW	<input type="checkbox"/>	0	EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/>	0	ONE OF THE MANY HIGHLY QUALIFIED	<input checked="" type="checkbox"/>	13	PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input type="checkbox"/>	3	A QUALIFIED MARINE	<input type="checkbox"/>	1	UNSATISFACTORY	<input type="checkbox"/>	0		
DESCRIPTION		COMPARATIVE ASSESSMENT																												
THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/>	0																												
ONE OF THE FEW	<input type="checkbox"/>	0																												
EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/>	0																												
ONE OF THE MANY HIGHLY QUALIFIED	<input checked="" type="checkbox"/>	13																												
PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input type="checkbox"/>	3																												
A QUALIFIED MARINE	<input type="checkbox"/>	1																												
UNSATISFACTORY	<input type="checkbox"/>	0																												
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.																														
<p>Sgt Bee is an outstanding and proven combat leader who has led his Marines confidently and without fear in combat. He demonstrates a clear understanding of commander's intent; takes initiative and implements solutions. His expert knowledge and tactical experience have been vital to the platoon during significant training and combat evolutions. He has trained his Marines to their maximum potential, and has also trained Afghan Forces to a higher standard. Recommend Sgt Bee be retained, promoted and assigned to billets of increased responsibility.</p>																														
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically signed by: CARL A HAVENS (Signature of Reviewing Officer)		20100924 (Date in YYYYMMDD format)																								
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement		(Signature of Marine Reported On)																								
						(Date in YYYYMMDD format)																								
L. ADDENDUM PAGE																														
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES																														
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.4.10) FITREP ID #1109104						PAGE 5 OF 5																								

USMC FITNESS REPORT (1510) NAVMC 10835A (Rev. 4-03) PREVIOUS EDITIONS WILL NOT BE USED								DO NOT STAPLE THIS FORM	
FITREP ID #1132086 (T A-PES 5.2.4.10)									
COMMANDANT'S GUIDANCE									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXX	SGT	20050301	0311	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCG	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
GC	20100824	20101001	N	MORTAR SECTION LEADER					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. QUAL	NN	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	NMED	e. WT	150	h. Status	a. Code	b. Descriptive Title			
c. CFT	NMED	f. Body Fat		i. Future Use	1st	O30	EWTG PACIFIC		
					2nd	1MV	SOI WEST		
					3rd	O29	EWTG ATLANTIC		
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
MALONE	TL	USMC	XXXX	1STLT	CO EXECUTIVE OFFICER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment					
ADAMSON	JT	USMC	XXXX	1STLT	COMPANY COMMANDER				
B. BILLET DESCRIPTION									
<p>-Carries out the orders of the Weapons Platoon Commander.</p> <p>-Responsible for the discipline, appearance, training, control, conduct, and welfare of his section at all times.</p> <p>-Responsible for the condition, care, and economical use of its weapons and equipment.</p> <p>-Trains section in the performance of tasks that support platoon and/or company training objectives</p> <p>-Assist the Platoon Commander with the integration of supporting fires in accomplishment of an assigned mission</p> <p>-Is responsible for the tactical employment, fire discipline, and fire control of the mortar section.</p>									
C. BILLET ACCOMPLISHMENTS									
<p>-Planned and executed a Call for Fire class for the company.</p> <p>-Conducted a service "C" uniform inspection for his section in preparation for the Company inspection.</p> <p>-Attended a New Equipment Training Course at the II MEF Simulation Center. The course focused on the set up and execution of fires specific simulations.</p> <p>-Monitored several PFT's for Marines leaving for schools.</p> <p>-Conducted daily periods of instruction with his section.</p>									

AR1907

USMC FITNESS REPORT (1510) NAVMC 10835A (Rev. 4-03) PREVIOUS EDITIONS WILL NOT BE USED FITREP ID #1137336 (T A-PES 5.2.4.10)								DO NOT STAPLE THIS FORM	
COMMANDANT'S GUIDANCE									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXX	SSGT	20101001	0369	0311		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
V16	12160	1STBN 6THMAR 2DMARDIV							
3. Occasion and Period Covered:									
a. DCG	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
TR	20101002	20101115	N	BN SACO					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. QUAL	NN	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	NREQ	e. WT	170	h. Status	a. Code	b. Descriptive Title			
c. CFT	NREQ	f. Body Fat		i. Future Use	1st	Y09	POST OR STATION WEST COAST		
					2nd	Y08	POST OR STATION EAST COAST		
					3rd				
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:					
HEATHERMAN	BG	USMC	XXXX	MAJ	BN EXECUTIVE OFFICER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:					
BENSON	GS	USMC	XXXXX	LTCOL	BATTALION COMMANDER				
B. BILLET DESCRIPTION									
<ul style="list-style-type: none"> - Supervise urinalysis testing program in accordance with MCO P1700.24B. - Report all violations of the Marine Corps policy on substance abuse to the Battalion Commander. - Identify, evaluate, counsel, and recommend referral of alcohol/drug abusers to the Substance Abuse Rehabilitation Program (SARP). - Provide liaison between SARP treatment facility and the command to deconflict between operational tempo, needs of the Marine Corps, and needs of the individual Marine. - Case management of individuals and appointments of personnel identified or requesting assistance with substance abuse issues. - Monitor service members during and throughout various treatment programs. - Provide individual aftercare programs at the battalion level. 									
C. BILLET ACCOMPLISHMENTS									

AR1912

USMC FITNESS REPORT (1510) NAVMC 10835A (Rev. 4-03) PREVIOUS EDITIONS WILL NOT BE USED FITREP ID #1162976 (T A-PES 5.2.4.10)								DO NOT STAPLE THIS FORM	
COMMANDANT'S GUIDANCE									
The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.									
A. ADMINISTRATIVE INFORMATION									
1. Marine Reported On:									
a. Last Name	b. First Name	c. MI	d. SSN	e. Grade	f. DOR	g. PMOS	h. BILMOS		
BEE	WILLIAM	O	XXXXX	SSGT	20101001	0369	0369		
2. Organization:									
a. MCC	b. RUC	c. Unit Description							
K61	31301	FLD MED TRNG BN EAST (PERM PERS)							
3. Occasion and Period Covered:									
a. DCG	b. From	To	c. Type	4. Duty Assignment (descriptive title):					
AN	20101116	20101231	N	MILITARY ADVISOR/MILITARY SUBJECT INSTRUCTOR					
5. Special Case:									
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:				7. Recommended For Promotion:		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A	
8. Special Information:									
a. QUAL	ES	d. HT(in.)	67	g. Reserve Component	9. Duty Preference:				
b. PFT	A 226	e. WT	170	h. Status	a. Code	b. Descriptive Title			
c. CFT	A283	i. Body Fat		i. Future Use	1st	Y05	FMF EAST COAST		
					2nd	Y08	POST OR STATION EAST COAST		
					3rd	V26			
10. Reporting Senior:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:					
ALAZIZ	S	USN	XXXXX	LT	COMPANY COMMANDER				
11. Reviewing Officer:									
a. Last Name	b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:					
ARELLANO	RE	USN	XXXXX	CAPT	COMMANDING OFFICER				
B. BILLET DESCRIPTION									
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program Personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. - Instructs, develops, and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and the M4 rifle as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Students Performance, Academic, and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 									
C. BILLET ACCOMPLISHMENTS									

AR1914

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI		d. SSN	
BEE		WILLIAM		O		XXXXX	
				a. OCC		b. From To	
				AN		20101116 20101231	
I. DIRECTED AND ADDITIONAL COMMENTS							
This is a not observed report due to insufficient observation time.							
J. CERTIFICATION							
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically signed by: SAAD M ALAZIZ		20110106	
				(Signature of Reporting Senior)		(Date in YYYYMMDD format)	
2. I ACKNOWLEDGE the adverse nature of this report and							
<input type="checkbox"/> I have no statement to make							
<input type="checkbox"/> I have attached a statement				(Signature of Marine Reported On)		(Date in YYYYMMDD format)	
K. REVIEWING OFFICER COMMENTS							
1. OBSERVATION: <input type="checkbox"/> Sufficient <input checked="" type="checkbox"/> Insufficient				2. EVALUATION: <input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur			
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.		DESCRIPTION		COMPARATIVE ASSESSMENT			
		THE EMINENTLY QUALIFIED MARINE					
		ONE OF THE FEW					
		EXCEPTIONALLY QUALIFIED MARINES					
		ONE OF THE MANY HIGHLY QUALIFIED					
		PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE					
		A QUALIFIED MARINE					
		UNSATISFACTORY					
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.							
SSgt Bee although assigned to the Battalion for a short period of time, has quickly adapted to the high tempo of training Hospital Corpsmen and Religious Program specialist for duty with Marine Corps. I am confident he will positively contribute the mission of the battalion.							
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically signed by: ROLAND E ARELLANO		20110107	
				(Signature of Reviewing Officer)		(Date in YYYYMMDD format)	
6. I ACKNOWLEDGE the adverse nature of this report and							
<input type="checkbox"/> I have no statement to make							
<input type="checkbox"/> I have attached a statement				(Signature of Marine Reported On)		(Date in YYYYMMDD format)	
L. ADDENDUM PAGE							
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.2.4.10) FITREP ID #1162976 PAGE 5 OF 5							

AR1315

USMC FITNESS REPORT (1510) FITREP ID #1386712 (T A-PES 5.3.1.1)								DO NOT STAPLE THIS FORM			
NAVMC 18835A (Rev. 4-03)											
PREVIOUS EDITIONS WILL NOT BE USED								COMMANDANT'S GUIDANCE			
FOUO - Privacy sensitive if filled in											
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>											
A. ADMINISTRATIVE INFORMATION											
1. Marine Reported On:											
a. Last Name		b. First Name		c. MI	d. SSN		e. Grade	f. DOR	g. PMOS	h. BILMOS	
BEE		WILLIAM		O	XXXXX		SSGT	20101001	0369	3529	
2. Organization:											
a. MCC		b. RUC		c. Unit Description							
K61		31301		FLD MED TRNG BN EAST (PERM PERS)							
3. Occasion and Period Covered:											
a. DCG	b. From		To		c. Type						
AN	20110101		20111231		N						
4. Duty Assignment (descriptive title):											
MILITARY ADVISOR/MILITARY SUBJECT INSTRUCTOR											
5. Special Case:											
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:							7. Recommended For Promotion:	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
8. Special Information:											
a. QUAL	ES	d. HT(in.)	68	g. Reserve Component	9. Duty Preference:						
b. PFT	A 215	e. WT	170	h. Status	a. Code	b. Descriptive Title					
c. CFT	A298	f. Body Fat		i. Future Use	1st	Y05 FMF EAST COAST					
					2nd	Y08 POST OR STATION EAST COAST					
					3rd	Y11 SECURITY FORCES - ATLANTIC					
10. Reporting Senior:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment						
ALAZIZ		S	USN	XXXXX	LT	COMPANY COMMANDER					
11. Reviewing Officer:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment						
ARELLANO		RE	USN	XXX	CAPT	COMMANDING OFFICER					
B. BILLET DESCRIPTION											
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills, and abilities necessary to serve with and support the Marine Corps. - Instructs, develops, and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuing presence for guidance and instruction on military matters to include discipline, uniform wear, and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 carbine as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Students Performance, Academic, and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 											
C. BILLET ACCOMPLISHMENTS											
<ul style="list-style-type: none"> - Developed field exercise resulting in better trained Navy Personnel that more accurately represents current tactics techniques and procedures currently being experienced in current operational theatres. - Trained 1347 Students in offensive/defensive attacks, ambushes and land navigation field exercise and hikes. - SNMs platoons received 3 "Top Dog" awards, 3 "Honor Graduates", 1 "Super Squad" And 1 "Super Doc" award over a period of 5 classes. - Completed Formal School Instructor Course - Personally led, mentored and trained 314 Sailors during this reporting period for duty in the Marine Operating Forces. - Led platoons on 20 conditioning hikes totaling 100 miles. - Maintained flawless accountability of personnel, weapons, and equipment for his platoons. 											

AR1916

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To	
BEE		WILLIAM	O	XXXXX	AN	20110101	20111231	
D. MISSION ACCOMPLISHMENT								
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.								
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.								
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
JUSTIFICATION:								
E. INDIVIDUAL CHARACTER								
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.								
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.								
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.								
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.					N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
JUSTIFICATION:								

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	AN	20110101 20111231
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are tone-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Instills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto: <i>Mission first, Marines always</i> , into action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To	
BEE		WILLIAM		O	XXXXX	AN	20110101 20111231	
G. INTELLECT AND WISDOM								
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commander's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.								
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.		PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.			Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.								
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.		Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.			Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.								
ADV	Majority of judgments are measured, circumspect, relevant and correct.		Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.			Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:								
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES								
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.								
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.		Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section G's were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.			No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO nonconcurred with all inflated reports.		N/O
A	B	C	D	E	F	G	H	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:								
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive FITREP ID #1386712 PAGE 4 OF 5								

1. Marine Reported On:				2. Occasion and Period Covered:				
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To	
BEE		WILLIAM		O	XXXX	AN	20110101	20111231
I. DIRECTED AND ADDITIONAL COMMENTS								
<p>Staff Sergeant Bee has demonstrated exceptional professional skill, enthusiasm, and flexibility during his tour at Field Medical Training Battalion-East. SSgt Bee's performance consistently exceeded the requirements of his assigned duties. His professional and military performance is outstanding. He has been a top performer and a valuable member of the Battalion. An outstanding instructor, his leadership, professional knowledge, and meticulous attention to detail earned him the respect and admiration of students and staff. He directly led, mentored, and instructed 314 Sailors in various Marine Corps Doctrines in both classroom and field environments which resulted in a 97 percent graduation rate. His combat and infantry experience are the backbone for the highly successful training program provided to the Hospital Corpsmen as we prepare them for combat duty with the Marine Corps. Enthusiastically recommend for promotion and increased responsibility.</p>								
J. CERTIFICATION								
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically signed by: SAAD ALAZIZ (Signature of Reporting Senior)		20120123 (Date in YYYYMMDD format)		
2. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement (Signature of Marine Reported On)		_____ (Date in YYYYMMDD format)		
K. REVIEWING OFFICER COMMENTS								
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient			2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur					
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.			DESCRIPTION THE EMINENTLY QUALIFIED MARINE ONE OF THE FEW EXCEPTIONALLY QUALIFIED MARINES ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE A QUALIFIED MARINE UNSATISFACTORY			COMPARATIVE ASSESSMENT 0 0 3 15 9 2 0 0		
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.								
<p>MRO is a true long-ball hitter in Field Medical Training Battalion-East. Hard working and totally dedicated to mission accomplishment. Leadership skills, instructional ability, and attention to detail are truly impressive. A determined and loyal SNCO who has continues to excel in all aspects of job performance. Promotion and retention is a must.</p>								
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically signed by: ROLAND E ARELLANO (Signature of Reviewing Officer)		20120124 (Date in YYYYMMDD format)		
6. I ACKNOWLEDGE the adverse nature of this report and				<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement (Signature of Marine Reported On)		_____ (Date in YYYYMMDD format)		
L. ADDENDUM PAGE								
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES								
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive. FITREP ID #1386712... PAGE 5 OF 5 AR1320								

USMC FITNESS REPORT (1610) FITREP ID #1602431 (T A-PES 5.3.1.1)										DO NOT STAPLE THIS FORM	
NAVMC 18835A (Rev. 4-03)											
PREVIOUS EDITIONS WILL NOT BE USED										COMMANDANT'S GUIDANCE	
FOUO - Privacy sensitive if filled in											
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>											
A. ADMINISTRATIVE INFORMATION											
1. Marine Reported On:											
a. Last Name		b. First Name		c. MI	d. SSN		e. Grade		f. DOR	g. PMOS	h. BILMOS
BEE		WILLIAM		O	XXXX		SSGT		20101001	0369	0369
2. Organization:											
a. MCC		b. RUC		c. Unit Description							
K61		31301		FLD MED TRNG BN EAST (PERM PERS)							
3. Occasion and Period Covered:											
a. DCG	b. From	To	c. Type	4. Duty Assignment (descriptive title):							
AN	20120101	20121231	N	MILITARY INSTRUCTOR							
5. Special Case:											
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:	7. Recommended For Promotion:							
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material <input type="checkbox"/>	b. Derogatory Material <input type="checkbox"/>	c. Disciplinary Action <input type="checkbox"/>	a. Yes <input checked="" type="checkbox"/>	b. No <input type="checkbox"/>	c. N/A <input type="checkbox"/>			
8. Special Information:											
a. QUAL	ES	d. HT(in.)	67	g. Reserve Component		9. Duty Preference:					
b. PFT	A219	e. WT	170	h. Status		a. Code	b. Descriptive Title				
c. CFT	A286	f. Body Fat		i. Future Use		1st	Y00	NO PREFERENCE / AS DIRECTED			
						2nd	Y00	NO PREFERENCE / AS DIRECTED			
						3rd	Y00	NO PREFERENCE / AS DIRECTED			
10. Reporting Senior:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:						
ALAZIZ		S	USN	XXXX	LCDR	COMPANY COMMANDER					
11. Reviewing Officer:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment:						
CLONTZ		DT	USN	XXXX	CAPT	COMMANDING OFFICER					
B. BILLET DESCRIPTION											
<ul style="list-style-type: none"> - To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. - Instructs, develops and evaluates Navy Petty Officers in combat leadership. - Coordinates and executes a progressive physical fitness program for Navy students. - Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform wear and accountability of gear and personnel. - Establishes and updates lesson plans and supporting material. - Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as developing their marksmanship. - Responsible for instructing and supervising close order drill. - Active member of Student Performance, Academic and Disciplinary Review Boards. - Responsible for accountability, good order and discipline, and morale of personnel. 											
C. BILLET ACCOMPLISHMENTS											
<ul style="list-style-type: none"> -Assisted in the development and refinement of the battalion's culminating field exercise resulting in more realistic and current tactics, techniques and procedures used in the Fleet Marine Force. -Personally led, mentored and trained over 268 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training. -As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations. -Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance throughout the calendar year. -flawlessly maintained accountability of personnel, weapons, and equipment. 											

AR1921

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE		WILLIAM	O	XXXX	AN	20120101	20121231
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive FITREP ID #1602431 PAGE 2 OF 6							

AR1322

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	AN	20120101 20121231
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. <i>Creating an atmosphere tolerant of mistakes in the course of learning.</i>							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are time-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on Unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Innately and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto <i>Mission first, Marines always</i> , into action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI		d. SSN	
BEE		WILLIAM		O		XXXX	
				a. OCC		b. From To	
				AN		20120101 20121231	
G. INTELLECT AND WISDOM							
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commander's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.							
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.							
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.	Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.							
ADV	Majority of judgments are measured, circumspect, relevant and correct.	Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.	Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES							
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.							
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.	Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section G's were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.				N/O
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXXX	AN	20120101	20121231
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>SSgt Bee is an outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailors and Marines at FMTB-East. His performance has had force-wide impact and significantly enhanced the quality, character, capabilities, and attitude of thousands of Hospital Corpsmen, Religious Program Specialists, Chaplains, and Navy Medical Department Officers now serving with the Marine Corps operating forces world-wide. A phenomenal instructor whose students always performed at the highest level. SSgt Bee is our lead suicide prevention instructor who provides annual training to our staff as well as a suicide prevention training brief to every FMST/CREST class. His excellence in leading Sailors is noteworthy as noted by the number of accolades he receives from both enlisted and officer students. SSgt Bee is without a doubt ready to perform at the next level and has earned my recommendation for promotion to GySgt.</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically signed by: SAAD ALAZIZ		20130130
				(Signature of Reporting Senior)		(Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement						<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient			2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur			
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.	DESCRIPTION		COMPARATIVE ASSESSMENT			
	THE EMINENTLY QUALIFIED MARINE	<input type="checkbox"/>	0			
	ONE OF THE FEW	<input type="checkbox"/>	0			
	EXCEPTIONALLY QUALIFIED MARINES	<input type="checkbox"/>	3			
	ONE OF THE MANY HIGHLY QUALIFIED	<input checked="" type="checkbox"/>	6			
	PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE	<input type="checkbox"/>	9			
A QUALIFIED MARINE	<input type="checkbox"/>	0				
UNSATISFACTORY	<input type="checkbox"/>	1	0			
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.						
<p>Concur with RS remarks. SSgt Bee performed his duties in a highly exemplary manner for this reporting period and is a true asset to this command. His performance definitely improved the efficiency of our training programs and directly contributed to our success. MRO continuously focuses on subordinate development, providing positive direction and a climate where his personnel can succeed as well as ensuring that our Corpsmen are ready for the challenges associated with serving with the FMF. Stands ready today to be a GySgt. Retain, promote ahead of contemporaries.</p>						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically signed by: DAVID T CLONIZ		20130131
				(Signature of Reviewing Officer)		(Date in YYYYMMDD format)
6. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make <input type="checkbox"/> I have attached a statement						<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive. FITREP ID #1602431. PAGE 5 OF 5						

USMC FITNESS REPORT (1510) FITREP ID #1623427 (T A-PES 5.3.1.1)								DO NOT STAPLE THIS FORM			
NAVMC 18835A (Rev. 4-03)								PREVIOUS EDITIONS WILL NOT BE USED			
FOUO - Privacy sensitive if filled in								COMMANDANT'S GUIDANCE			
<p>The completed fitness report is the most important information component in manpower management. It is the primary means of evaluating a Marine's performance and is the Commandant's primary tool for the selection of personnel for promotion, augmentation, resident schooling, command, and duty assignments. Therefore, the completion of this report is one of an officer's most critical responsibilities. Inherent in this duty is the commitment of each Reporting Senior and Reviewing Officer to ensure the integrity of the system by giving close attention to accurate marking and timely reporting. Every officer serves a role in the scrupulous maintenance of this evaluation system, ultimately important to both the individual and the Marine Corps. Inflationary markings only serve to dilute the actual value of each report. Reviewing Officers will not concur with inflated reports.</p>											
A. ADMINISTRATIVE INFORMATION											
1. Marine Reported On:											
a. Last Name		b. First Name		c. MI	d. SSN		e. Grade	f. DOR	g. PMOS	h. BILMOS	
BEE		WILLIAM		O	XXXX		SSGT	20101001	0369	0369	
2. Organization:											
a. MCC		b. RUC		c. Unit Description							
K61		31301		FLD MED TRNG BN EAST (PERM PERS)							
3. Occasion and Period Covered:											
a. DCG	b. From		To		c. Type						
EN	20130101		20130401		N						
4. Duty Assignment (descriptive title):											
MILITARY INSTRUCTOR											
5. Special Case:											
a. Adverse	b. Not Observed	c. Extended	6. Marine Subject Of:							7. Recommended For Promotion:	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Commendatory Material	b. Derogatory Material	c. Disciplinary Action	a. Yes	b. No	c. N/A			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
8. Special Information:											
a. QUAL	ES	d. HT(in.)	68	g. Reserve Component	9. Duty Preference:						
b. PFT	NREQ	e. WT	172	h. Status	a. Code	b. Descriptive Title					
c. CFT	NREQ	f. Body Fat		i. Future Use	1st	Y00 NO PREFERENCE / AS DIRECTED					
					2nd	Y00 NO PREFERENCE / AS DIRECTED					
					3rd	Y00 NO PREFERENCE / AS DIRECTED					
10. Reporting Senior:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment						
ALAZIZ		S	USN	XXXX	LCDR	COMPANY COMMANDER					
11. Reviewing Officer:											
a. Last Name		b. Inlt. Service	d. SSN	e. Grade	f. Duty Assignment						
CLONTZ		DT	USN	XXXX	CAPT	COMMANDING OFFICER					
B. BILLET DESCRIPTION											
<p>-To train Navy Medical Department personnel and Religious Program personnel in the knowledge, skills and abilities necessary to serve with and support the Marine Corps. -Instructs, develops and evaluates Navy Petty Officers in combat leadership. -Coordinates and execute a progressive physical fitness program for Navy students. -Provides a consistent and continuous presence for guidance and instruction on military matters to include discipline, uniform and accountability of gear and personnel. -Establishes and updates lesson plans and supporting material. -Familiarizes students in handling and maintenance of the M9 service pistol and M4 rifle as well as developing their marksmanship. -Responsible for instructing and supervising close order drill. -Active member of Student Performance, Academic and Disciplinary Review Boards. -Responsible for accountability, good order and discipline, and morale of personnel.</p>											
C. BILLET ACCOMPLISHMENTS											
<p>-Personally led, mentored and trained over 74 students in Combat Leadership, Offensive and Defensive Operations, Land Navigation, Weapons Handling, Close Order Drill and Physical Training. -As Combat Marksmanship Coach, trained and mentored over 1200 students in various components of the Marine Corps Marksmanship program with zero mishaps or safety violations. -Trained as a Master Suicide Prevention Coordinator, served as liaison for both staff and students and ensured all personnel received instruction and guidance. -Flawlessly maintained accountability of personnel, weapons, and equipment.</p>											

AR1926

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE		WILLIAM	O	XXXXX	EN	20130101	20130401
D. MISSION ACCOMPLISHMENT							
1. PERFORMANCE. Results achieved during the reporting period. How well those duties inherent to a Marine's billet, plus all additional duties, formally and informally assigned, were carried out. Reflects a Marine's aptitude, competence, and commitment to the unit's success above personal reward. Indicators are time and resource management, task prioritization, and tenacity to achieve positive ends consistently.							
ADV	Meets requirements of billet and additional duties. Aptitude, commitment, and competence meet expectations. Results maintain status quo.	Consistently produces quality results while measurably improving unit performance. Habitually makes effective use of time and resources. Improves billet procedures and products. Positive impact extends beyond billet expectations.	Results far surpass expectations. Recognizes and exploits new resources; creates opportunities. Emulated; sought after as an expert with influence beyond unit. Impact significant; innovative approaches to problems produce significant gains in quality and efficiency.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. PROFICIENCY. Demonstrates technical knowledge and practical skill in the execution of the Marine's overall duties. Combines training, education and experience. Translates skills into actions which contribute to accomplishing tasks and missions. Imparts knowledge to others. Grade dependent.							
ADV	Competent. Possesses the requisite range of skills and knowledge commensurate with grade and experience. Understands and articulates basic functions related to mission accomplishment.	Demonstrates mastery of all required skills. Expertise, education and experience consistently enhance mission accomplishment. Innovative troubleshooter and problem solver. Effectively imparts skills to subordinates.	True expert in field. Knowledge and skills impact far beyond those of peers. Translates broad-based education and experience into forward thinking, innovative actions. Makes immeasurable impact on mission accomplishment. Peerless teacher; selflessly imparts expertise to subordinates, peers, and seniors.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
E. INDIVIDUAL CHARACTER							
1. COURAGE. Moral or physical strength to overcome danger, fear, difficulty or anxiety. Personal acceptance of responsibility and accountability, placing conscience over competing interests regardless of consequences. Conscious, overriding decision to risk bodily harm or death to accomplish the mission or save others. The will to persevere despite uncertainty.							
ADV	Demonstrates inner strength and acceptance of responsibility commensurate with scope of duties and experience. Willing to face moral or physical challenges in pursuit of mission accomplishment.	Guided by conscience in all actions. Proven ability to overcome danger, fear, difficulty or anxiety. Exhibits bravery in the face of adversity and uncertainty. Not deterred by morally difficult situations or hazardous responsibilities.	Uncommon bravery and capacity to overcome obstacles and inspire others in the face of moral dilemma or life-threatening danger. Demonstrated under the most adverse conditions. Selfless. Always places conscience over competing interests regardless of physical or personal consequences.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. EFFECTIVENESS UNDER STRESS. Thinking, functioning and leading effectively under conditions of physical and/or mental pressure. Maintaining composure appropriate for the situation, while displaying steady purpose of action, enabling one to inspire others while continuing to lead under adverse conditions. Physical and emotional strength, resilience and endurance are elements.							
ADV	Exhibits discipline and stability under pressure. Judgment and effective problem-solving skills are evident.	Consistently demonstrates maturity, mental agility and willpower during periods of adversity. Provides order to chaos through the application of intuition, problem-solving skills, and leadership. Composure reassures others.	Demonstrates seldom-matched presence of mind under the most demanding circumstances. Stabilizes any situation through the resolute and timely application of direction, focus and personal presence.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. INITIATIVE. Action in the absence of specific direction. Seeing what needs to be done and acting without prompting. The instinct to begin a task and follow through energetically on one's own accord. Being creative, proactive and decisive. Transforming opportunity into action.							
ADV	Demonstrates willingness to take action in the absence of specific direction. Acts commensurate with grade, training and experience.	Self-motivated and action-oriented. Foresight and energy consistently transform opportunity into action. Develops and pursues creative, innovative solutions. Acts without prompting. Self-starter.	Highly motivated and proactive. Displays exceptional awareness of surroundings and environment. Uncanny ability to anticipate mission requirements and quickly formulate original, far-reaching solutions. Always takes decisive, effective action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							
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AR1327

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	EN	20130101 20130401
F. LEADERSHIP							
1. LEADING SUBORDINATES. The inseparable relationship between leader and led. The application of leadership principles to provide direction and motivate subordinates. Using authority, persuasion and personality to influence subordinates to accomplish assigned tasks. Sustaining motivation and morale while maximizing subordinates' performance.							
ADV	Engaged; provides instructions and directs execution. Seeks to accomplish mission in ways that sustain motivation and morale. Actions contribute to unit effectiveness.	Achieves a highly effective balance between direction and delegation. Effectively tasks subordinates and clearly delineates standards expected. Enhances performance through constructive supervision. Fosters motivation and enhances morale. Builds and sustains teams that successfully meet mission requirements. Encourages initiative and candor among subordinates.	Promotes creativity and energy among subordinates by striking the ideal balance of direction and delegation. Achieves highest levels of performance from subordinates by encouraging individual initiative. Engenders willing subordination, loyalty, and trust that allow subordinates to overcome their perceived limitations. Personal leadership fosters highest levels of motivation and morale, ensuring mission accomplishment even in the most difficult circumstances.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. DEVELOPING SUBORDINATES. Commitment to train, educate, and challenge all Marines regardless of race, religion, ethnic background, or gender. Mentorship. Cultivating professional and personal development of subordinates. Developing team players and esprit de corps. Ability to combine teaching and coaching. Creating an atmosphere tolerant of mistakes in the course of learning.							
ADV	Maintains an environment that allows personal and professional development. Ensures subordinates participate in all mandated development programs.	Develops and institutes innovative programs, to include PME, that emphasize personal and professional development of subordinates. Challenges subordinates to exceed their perceived potential thereby enhancing unit morale and effectiveness. Creates an environment where all Marines are confident to learn through trial and error. As a mentor, prepares subordinates for increased responsibilities and duties.	Widely recognized and emulated as a teacher, coach and leader. Any Marine would desire to serve with this Marine because they know they will grow personally and professionally. Subordinate and unit performance far surpassed expected results due to MRC's mentorship and team building talents. Attitude toward subordinate development is infectious, extending beyond the unit.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. SETTING THE EXAMPLE. The most visible facet of leadership: how well a Marine serves as a role model for all others. Personal action demonstrates the highest standards of conduct, ethical behavior, fitness, and appearance. Bearing, demeanor, and self-discipline are elements.							
ADV	Maintains Marine Corps standards for appearance, weight, and uniform wear. Sustains required level of physical fitness. Adheres to the tenets of the Marine Corps' core values.	Personal conduct on and off duty reflects highest Marine Corps standards of integrity, bearing and appearance. Character is exceptional. Actively seeks self-improvement in wide-ranging areas. Dedication to duty and professional example encourage others' self-improvement efforts.	Model Marine, frequently emulated. Exemplary conduct, behavior, and actions are time-setting. An inspiration to subordinates, peers, and sailors. Remarkable dedication to improving self and others.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ENSURING WELL-BEING OF SUBORDINATES. Genuine interest in the well-being of Marines. Efforts enhance subordinates' ability to concentrate/focus on unit mission accomplishment. Concern for family readiness is inherent. The importance placed on welfare of subordinates is based on the belief that Marines take care of their own.							
ADV	Deals confidently with issues pertinent to subordinate welfare and recognizes suitable courses of action that support subordinates' well-being. Applies available resources, allowing subordinates to effectively concentrate on the mission.	Instills and/or reinforces a sense of responsibility among Junior Marines for themselves and their subordinates. Actively fosters the development of and uses support systems for subordinates which improve their ability to contribute to unit mission accomplishment. Efforts to enhance subordinate welfare improve the unit's ability to accomplish its mission.	Noticeably enhances subordinates well-being, resulting in a measurable increase in unit effectiveness. Maximizes unit and base resources to provide subordinates with the best support available. Proactive approach serves to energize unit members to "take care of their own," thereby contracting potential problems before they can hinder subordinates' effectiveness. Widely recognized for techniques and policies that produce results and build morale. Builds strong family atmosphere. Puts motto: <i>Mission first, Marines always</i> , into action.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. COMMUNICATION SKILLS. The efficient transmission and receipt of thoughts and ideas that enable and enhance leadership. Equal importance given to listening, speaking, writing, and critical reading skills. Interactive, allowing one to perceive problems and situations, provide concise guidance, and express complex ideas in a form easily understood by everyone. Allows subordinates to ask questions, raise issues and concerns and venture opinions. Contributes to a leader's ability to motivate as well as counsel.							
ADV	Skilled in receiving and conveying information. Communicates effectively in performance of duties.	Clearly articulates thoughts and ideas, verbally and in writing. Communication in all forms is accurate, intelligent, concise, and timely. Communicates with clarity and verve, ensuring understanding of intent or purpose. Encourages and considers the contributions of others.	Highly developed facility in verbal communication. Adept in composing written documents of the highest quality. Combines presence and verbal skills which engender confidence and achieve understanding irrespective of the setting, situation, or size of the group addressed. Displays an intuitive sense of when and how to listen.			N/O	
A	B	C	D	E	F	G	H
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JUSTIFICATION:							

1. Marine Reported On:				2. Occasion and Period Covered:			
a. Last Name		b. First Name		c. MI	d. SSN	a. OCC	b. From To
BEE		WILLIAM		O	XXXX	EN	20130101 20130401
G. INTELLECT AND WISDOM							
1. PROFESSIONAL MILITARY EDUCATION (PME). Commitment to intellectual growth in ways beneficial to the Marine Corps. Increases the breadth and depth of warfighting and leadership aptitude. Resources include resident schools; professional qualifications and certification processes; nonresident and other extension courses; civilian educational institution coursework; a personal reading program that includes (but is not limited to) selections from the Commander's Reading List; participation in discussion groups and military societies; and involvement in learning through new technologies.							
ADV	Maintains currency in required military skills and related developments. Has completed or is enrolled in appropriate level of PME for grade and level of experience. Recognizes and understands new and creative approaches to service issues. Remains abreast of contemporary concepts and issues.	PME outlook extends beyond MOS and required education. Develops and follows a comprehensive personal program which includes broadened professional reading and/or academic course work; advances new concepts and ideas.	Dedicated to life-long learning. As a result of active and continuous efforts; widely recognized as an intellectual leader in professionally related topics. Makes time for study and takes advantage of all resources and programs. Introduces new and creative approaches to service issues. Engages in a broad spectrum of forums and dialogues.			N/O	
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input checked="" type="checkbox"/>	
E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
2. DECISION MAKING ABILITY. Visible and timely problem solution. Contributing elements are judgment and decisiveness. Decisions reflect the balance between an optimal solution and a satisfactory, workable solution that generates tempo. Decisions are made within the context of the commander's established intent and the goal of mission accomplishment. Anticipation, mental agility, intuition, and success are inherent.							
ADV	Makes sound decisions leading to mission accomplishment. Actively collects and evaluates information and weighs alternatives to achieve timely results. Confidently approaches problems; accepts responsibility for outcomes.	Demonstrates mental agility; effectively prioritizes and solves multiple complex problems. Analytical abilities enhanced by experience, education, and intuition. Anticipates problems and implements viable, long-term solutions. Steadfast; willing to make difficult decisions.	Widely recognized and sought after to resolve the most critical, complex problems. Seldom matched analytical and intuitive abilities; accurately foresees unexpected problems and arrives at well-timed decisions despite fog and friction. Completely confident approach to all problems. Masterfully strikes a balance between the desire for perfect knowledge and greater tempo.			N/O	
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input type="checkbox"/>	
E <input checked="" type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
3. JUDGMENT. The discretionary aspect of decision making. Draws on core values, knowledge, and personal experience to make wise choices. Comprehends the consequences of contemplated courses of action.							
ADV	Majority of judgments are measured, circumspect, relevant and correct.	Decisions are consistent and uniformly correct; tempered by consideration of their consequences. Able to identify, isolate and assess relevant factors in the decision making process. Opinions sought by others. Subordinates personal interest in favor of impartiality.	Decisions reflect exceptional insight and wisdom; beyond this Marine's experience. Counsel sought by all; often an arbiter. Consistent, superior judgment inspires the confidence of seniors.			N/O	
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input checked="" type="checkbox"/>	
E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input type="checkbox"/>	
JUSTIFICATION:							
H. FULFILLMENT OF EVALUATION RESPONSIBILITIES							
1. EVALUATIONS. The extent to which this officer serving as a reporting official conducted, or required others to conduct, accurate, unbiased, and timely evaluations.							
ADV	Occasionally submitted untimely or administratively incorrect evaluations. As RS, submitted one or more reports that contained inflated markings. As RO, concurred with one or more reports from subordinates that were returned by HQMC for inflated marking.	Prepared unbiased evaluations which were consistently submitted on time. Evaluations accurately described performance and character. Evaluations contained no inflated markings. No reports returned by RO or HQMC for inflated marking. No subordinates' reports returned by HQMC for inflated marking. Few, if any, reports were returned by RO or HQMC for administrative errors. Section G's were void of superlatives. Justifications were specific, verifiable, substantive, and where possible, quantifiable and supported the markings given.	No reports submitted late. No reports returned by either RO or HQMC for administrative correction or inflated markings. No subordinates' reports returned by HQMC for administrative correction or inflated markings. Returned procedurally or administratively incorrect reports to subordinates for correction. As RO concurred with all inflated reports.			N/O	
A <input type="checkbox"/>		B <input type="checkbox"/>		C <input type="checkbox"/>		D <input type="checkbox"/>	
E <input type="checkbox"/>		F <input type="checkbox"/>		G <input type="checkbox"/>		H <input checked="" type="checkbox"/>	
JUSTIFICATION:							
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AR1528

1. Marine Reported On:				2. Occasion and Period Covered:		
a. Last Name	b. First Name	c. MI	d. SSN	a. OCC	b. From	To
BEE	WILLIAM	O	XXXX	EN	20130101	20130401
I. DIRECTED AND ADDITIONAL COMMENTS						
<p>SSgt Bee is an outstanding Marine who I have relied upon heavily to accomplish the mission of leading and training our Sailors and Marines at Field Medical Training Battalion-East. MRO has been a vital asset to this command and has gained my utmost trust and confidence. SSgt Bee's experience and expertise allowed him to perform the very demanding duty of Marine Military Instructor and his actions have had a direct and positive impact on the Battalion's mission to train our Navy Corpsmen and Religious Program Specialists to serve and support the Marine Corps.</p> <p>Directed Comment. Sect A, Item 3a: MRO has a release from active duty with honorable discharge date of 01 April 2013 and executes terminal leave on 18 February 2013.</p> <p>Directed Comment. Sect A, Item 6a: MRO received the Navy and Marine Corps Achievement Medal during this reporting period for sustained superior performance.</p>						
J. CERTIFICATION						
1. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality and that I have provided a signed copy of this report to the Marine Reported on.				Electronically signed by: SAAD ALAZIZ		2 0 1 3 0 2 2 8
				(Signature of Reporting Senior)		(Date in YYYYMMDD format)
2. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make						<input type="checkbox"/>
<input type="checkbox"/> I have attached a statement				(Signature of Marine Reported On)		(Date in YYYYMMDD format)
K. REVIEWING OFFICER COMMENTS						
1. OBSERVATION: <input checked="" type="checkbox"/> Sufficient <input type="checkbox"/> Insufficient			2. EVALUATION: <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur			
3. COMPARATIVE ASSESSMENT: Provide a comparative assessment of potential by placing an "X" in the appropriate box. In marking the comparison, consider all Marines of this grade whose professional abilities are known to you personally.	DESCRIPTION		COMPARATIVE ASSESSMENT			
	THE EMINENTLY QUALIFIED MARINE		<input type="checkbox"/>	0		
	ONE OF THE FEW		<input type="checkbox"/>	0		
	EXCEPTIONALLY QUALIFIED MARINES		<input type="checkbox"/>	3		
	ONE OF THE MANY HIGHLY QUALIFIED PROFESSIONALS WHO FORM THE MAJORITY OF THIS GRADE		<input checked="" type="checkbox"/>	9		
	A QUALIFIED MARINE		<input type="checkbox"/>	9		
UNSATISFACTORY		<input type="checkbox"/>	0			
4. REVIEWING OFFICER COMMENTS: Amplify your comparative assessment mark; evaluate potential for continued professional development to include: promotion, command, assignment, resident PME, and retention; and put Reporting Senior marks and comments in perspective.						
<p>Concur with RS remarks. Truly noteworthy SNCO who displays decisive leadership, good judgment and professional expertise. MRO has consistently demonstrated a total dedication to duty and a commitment to excellence in the morale and welfare of those under his charge. A true asset to the Marine Corps, his leadership is sought after by many. Takes great pride in being a Marine and provides sound leadership and guidance to all. Although MRO is leaving active duty, if he ever returns and I was given the opportunity, I would actively seek him out to serve with anywhere at any time.</p>						
5. I CERTIFY that to the best of my knowledge and belief all entries made hereon are true and without prejudice or partiality.				Electronically signed by: DAVID T CLONIZ		2 0 1 3 0 4 0 2
				(Signature of Reviewing Officer)		(Date in YYYYMMDD format)
6. I ACKNOWLEDGE the adverse nature of this report and						
<input type="checkbox"/> I have no statement to make						<input type="checkbox"/>
<input type="checkbox"/> I have attached a statement				(Signature of Marine Reported On)		(Date in YYYYMMDD format)
L. ADDENDUM PAGE						
ADDENDUM PAGE ATTACHED: <input type="checkbox"/> YES						
NAVMC 10835A (Rev. 4-03) (T A-PES 5.3.1.1) FOR OFFICIAL USE ONLY - Privacy sensitive. FITREP ID #1623427.						PAGE 5 OF 5

AR1330



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

RJO
Docket No. 3901-18
Ref: Signature Date

MR WILLIAM O BEE
204 SPINNAKER PLACE
JACKSONVILLE NC 28546

Dear Mr. Bee,

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 for Correction of Naval Records, sitting in executive session, considered your application on 25 July 2019. The names and votes of the members of the panel 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. In addition, the Board considered the advisory opinion contained in Senior Medical Advisor CORB letter 1910 CORB: 002 of 4 April 2019 and Director CORB letter 1910 CORB: 001 of 11 April 2019 and your response to the opinions.

A review of your record shows that you entered active duty with the Marine Corps in June 2000. You were deployed to Afghanistan on multiple occasions and suffered a concussion in June 2010 while in Afghanistan that resulted in your evacuation to Germany for treatment. You were diagnosed a Traumatic Brain Injury (TBI) and transferred back the United States with eventual placement on limited duty effective 21 June 2010. You were removed from limited duty on 20 December 2010. On 3 October 2012, you requested to participate in the Voluntary Separation Pay Program (VSP) for which you were later approved. You were seen by mental health providers in January 2013 and February 2013 and diagnosed with TBI, post-concussion syndrome with cognitive impairment, and Post-Traumatic Stress Disorder (PTSD) before being medically cleared to separate from active duty on 13 February 2013. On 1 April 2013, you were discharged from the Marine Corps pursuant to your request to participate in the VSP program. Post-discharge, you were rated by the Department of Veterans Affairs (VA) for a number of disability conditions, including TBI, Post-Concussive Syndrome, Cognitive Impairment, and

LATHAM & WATKINS^{LLP}

EXHIBIT D

Affidavit of William O. Bee

AR1350

Appx4925

**DECLARATION OF WILLIAM O. BEE IN SUPPORT OF HIS PETITION TO THE
BOARD OF CORRECTION OF NAVAL RECORDS**

I, William O. Bee, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over the age of 18 years. I live in Jacksonville, North Carolina.
2. I submit this declaration in support of my Petition to the Board of Correction of Naval Records (Docket No. 3901-18). Each of the facts set forth in this declaration is true to my personal knowledge, and I am competent to testify on the matters stated herein.
3. I enlisted in the United States Marine Corps in September 1999 and entered active duty in June 2000. I served primarily as a rifleman and ultimately achieved the rank of Staff Sergeant during my career with the Marines and was deployed four times in active duty combat roles in Afghanistan. During my final such deployment in June 2010, I was injured by an improvised explosive device blast and suffered a concussion. I was medically evacuated to Germany for treatment of the injuries sustained as a result of the blast, and was thereafter transferred to the United States, where I remained until my discharge in April 2013.
4. Prior to my discharge from the Marines in 2013, I was stationed at FMTB East in what my supervisors communicated to me would be a “break” in lieu of a fifth active duty deployment.
5. While I was stationed at FMTB East as an instructor, I experienced several bouts of vomiting and severe abdominal pain, at times while on duty. During such instances, my colleagues at FMTB East occasionally had to take over my classes when these symptoms were too severe for me to continue to communicate with the trainees under my supervision.
6. Also during my time at FMTB East, I was warned about my erratic behavior and overly harsh discipline of trainees under my supervision on the rifle range. My colleagues and

1

CONFIDENTIAL

US-DOCS107889843.4

DRAFT

AR1351

Appx4926

**BEFORE THE BOARD
FOR CORRECTION OF NAVAL RECORDS**

<p><i>In the Matter of</i></p> <p>William O. Bee United States Marines</p> <p><i>Applicant.</i></p>	<p>Dkt. No.</p>
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**BRIEF IN SUPPORT OF APPLICATION FOR
CORRECTION OF MILITARY RECORD
UNDER 10 U.S.C. § 1552**

David Mulliken
Denis Griffin
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Phone (858) 523-5400
Fax (858) 523-5450
Attorneys for Applicant

April 25, 2018

AR1363

Appx4938

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BRIEF IN SUPPORT OF APPLICATION

INTRODUCTION

William O. Bee, a native of Wooster, Ohio, enlisted in the United States Marine Corps on September 16, 1999 at the age of 17 and entered active duty on June 20, 2000. He was inspired to join the Marines by his family's distinguished record of military service, and his resolve was further bolstered in the aftermath of 9/11, after which he committed himself to do all he could to serve his country. Over the next 13 years, Bee served honorably with the Marines until his honorable discharge on April 1, 2013. While serving in the Marine Corps, he worked primarily as a rifleman and ultimately achieved the rank of Staff Sergeant ("SSgt."). As a result of his exemplary military service, SSgt. Bee received several medals and citations, for meritorious actions both as an individual and as a member of a unit that served with distinction in several intense combat zones. SSgt. Bee's awards included the Purple Heart, the Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device), the Enduring Freedom Combat Action Ribbon, the Presidential Unit Citation, three Navy Unit Commendations, two Navy Meritorious Unit Commendations and four Marine Corps Good Conduct Medals.¹

SSgt. Bee served in four high-risk active duty combat deployments in Afghanistan during the first decade of his service. His first deployment to Afghanistan came in the immediate aftermath of 9/11, extending from September 2001 to April 2002, followed by a second deployment from October 2002 to December 2002. His third deployment extended from December 2007 to September 2008, during which he earned the Navy Marine Corps Achievement Medal with the Combat V for service in Operation Areda Rosa, in which SSgt. Bee was wounded by sniper fire that caused a ricocheting stone to impact his head.

The fourth and final deployment from December 2009 to June 2010 proved to be the most damaging to SSgt. Bee's physical and mental health. SSgt. Bee experienced several traumatic events leading up to the events of his final injuries in Afghanistan, including: (i) a close friend was shot in the head and died in SSgt. Bee's arms; (ii) while SSgt. Bee was evacuating a gravely wounded fellow Marine to safety, that Marine also died during the helicopter evacuation; and (iii) an extended firefight with the Taliban during which SSgt. Bee almost ran out of ammunition and in which one of the men under his charge was struck by enemy fire. The trauma SSgt. Bee experienced in this deployment culminated in June, during SSgt. Bee's service in Operation Moshtarak in Marjah, Helmand Province. This was a volatile haven for Taliban fighters and a critical center for the enemy's production of improvised explosive devices ("IEDs"). While on duty in Marjah, three IEDs exploded along the exterior walls of a building that SSgt. Bee and other members of his squad were using as a forward observation area. SSgt. Bee was blown off of his feet and knocked unconscious for an extended period, requiring medical evacuation to Germany for the resulting brain damage, followed by further treatment in the US. Two of his fellow Marines positioned nearby were killed. Compounding the trauma, SSgt. Bee learned that the remains of the two men who were killed were stored in trash cans as the only option available at the time. Symptoms of traumatic brain injury ("TBI") became apparent almost immediately. SSgt. Bee also developed worsening symptoms of post-traumatic stress disorder ("PTSD") which would continue to manifest over time. As a result of the injuries and traumas suffered in

¹ Exhibits A and B

**EXHIBITS IN SUPPORT OF
BCNR APPLICATION FOR WILLIAM BEE**

- Exhibit A Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device) Certificate (Presented November 20, 2008)
- Exhibit B Certificate of Release or Discharge from Active Duty, dated April 1, 2013
- Exhibit C Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire
- Exhibit D Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI) Disability Benefits Questionnaire (Jan. 23, 2013)
- Exhibit E Certificate of Purple Heart Award, given July 19 2016
- Exhibit F Excerpt from Chronological Record of Medical Care
- Exhibit G Excerpts from Chronological Record of Medical Care
- Exhibit H Commandant's Guidance for 2011, 2012, and applicable portion of 2013
- Exhibit I Excerpt from Chronological Record of Medical Care
- Exhibit J Dept. of Veteran Affairs Rating Decision (October 10, 2013)
- Exhibit K Excerpts from Chronological Record of Medical Care
- Exhibit L Excerpt from Chronological Record of Medical Care
- Exhibit M Excerpt from Chronological Record of Medical Care
- Exhibit N Excerpt from Chronological Record of Medical Care
- Exhibit O Excerpt from Chronological Record of Medical Care
- Exhibit P Excerpt from Chronological Record of Medical Care
- Exhibit Q Excerpt from Chronological Record of Medical Care
- Exhibit R Excerpt from Chronological Record of Medical Care
- Exhibit S Excerpt from Chronological Record of Medical Care
- Exhibit T Written report of Michael Blumenfield, M.D., dated March 8, 2018

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**Initial Post Traumatic Stress Disorder (PTSD)
Disability Benefits Questionnaire**
** Internal VA or DoD Use Only**

Diagnosis #3: Generalized Anxiety Disorder
 ICD code: 300.02
 Indicate the Axis category:
 Axis I Axis II
 Comments, if any: He experiences persistent, intrusive, and disruptive symptoms of anxiety on a daily basis, symptoms which include: being on edge; ill-at-ease; tense; shaky; jumpy; nervous; and apprehensive.

Diagnosis #4: Panic Disorder with Agoraphobia
 ICD code: 300.21
 Indicate the Axis category:
 Axis I Axis II
 Comments, if any: He experiences recurrent episodes of intense, panic-level anxiety. Functioning outside of a gradually narrowing comfort zone (Agoraphobia) causes considerable distress, which he has endured many times in order to do what is required of him. Currently, the Panic Anxiety Episodes occur on an almost continuous basis. His panic episodes include: pounding heart; sweating; shortness of breath; trembling; and sense of impending doom.

If additional diagnoses, describe (using above format): Diagnosis #5: Major Depressive Disorder, Single Episode, Moderate, Without Psychotic Features
 ICD code: 296.22; Axis category: X Axis I Axis II
 Comments: The Major Depressive Disorder involves a chronically high level of dysphoric mood, loss of interest in normal activities, self doubt, feelings of worthlessness, anhedonia, anergia, and intermittent hopelessness about ever getting well and being able to function again. There were times after his last Afghanistan deployment when he was contemplating suicide. He denies any recent or current suicidal thoughts or intent.

b. Axis III - medical diagnoses (to include TBI): As stated in VERIS II and/or the VBA Case Assignment Sheet: "Foot Condition; Ankle Condition; Knee Condition; Hip Condition; Spine Condition; Shoulder Condition; Hand Condition; Wrist Condition; Gastrointestinal Condition; Heartburn Condition; Headaches Condition; Prostate Condition; Erectile Dysfunction Condition; Hearing Loss Condition; Tinnitus Condition"
 ICD code: _____
 Comments, if any: _____

c. Axis IV - Psychosocial and Environmental Problems (describe, if any): Deployment-related, and other service-related, symptoms and conditions; imminent transition to civilian environment; seeking post-military employment and education; significant concern about overall health, emotional and physical; entered the military in excellent health, but departing in diminished health.

d. Axis V - Current global assessment of functioning (GAF) score: 40
 Comments, if any: _____

3. Differentiation of symptoms
 a. Does the Veteran have more than one Mental disorder diagnosed?
 Yes No
 If yes, complete the following question:
 b. Is it possible to differentiate what symptom(s) is/are attributable to each diagnosis?
 Yes No Not applicable (N/A)
 If no, provide reason that it is not possible to differentiate what portion of each symptom is attributable to

Claimant name: BEE, WILLIAM Account #: 3037604.1.3 Date of Examination: 01/23/2013

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**Initial Post Traumatic Stress Disorder (PTSD)
Disability Benefits Questionnaire**
** Internal VA or DoD Use Only**

each diagnosis: _____
 If yes, list which symptoms are attributable to each diagnosis: The symptoms of each condition can be delineated from the symptoms of any other condition.

The PTSD includes chronic, severe symptoms of intrusive revivification or re-experiencing; avoidance of possible triggering factors, with numbing of responsiveness; and hyperarousal of the autonomic nervous system

Primary Insomnia is severe and chronic, resulting in inadequate amounts of sleep and an inability to achieve restorative sleep.

The Generalized Anxiety Disorder involves chronic, nagging anxiety, often creating a state of apprehension, physical tension and worry, ruminative thinking, fear and a state of uneasiness.

The Panic Disorder (With Agoraphobia) brings severe, acute anxiety which can be temporarily debilitating and far-reaching in its effects upon the Claimant's life. It limits his mobility and makes it difficult to go anywhere or do anything out of the ordinary or outside of his narrowed comfort zone.

The Major Depressive Disorder involves a chronically high level of dysphoric mood, loss of interest in normal activities, self doubt, feelings of worthlessness, anhedonia, anergia, and intermittent hopelessness about ever getting well and being able to function again.

c. Does the Veteran have a diagnosed traumatic brain injury (TBI)?
 Yes No Not shown in records reviewed Comments, if any: _____
 If yes, complete the following question:

d. Is it possible to differentiate what symptom(s) is/are attributable to each diagnosis?
 Yes No Not applicable (N/A)
 If no, provide reason that it is not possible to differentiate what portion of each symptom is attributable to each diagnosis: _____
 If yes, list which symptoms are attributable to each diagnosis: In addition to the differentiations delineated above, the TBI includes serious memory deficits, visual spatial disturbances, apraxia, communicational deficits, increased verbal explosiveness, social aversion, and impaired executive functioning.

4. Occupational and social impairment
 a. Which of the following best summarizes the Veteran's level of occupational and social impairment with regards to all mental diagnoses?
 (Check only one)

- No mental disorder diagnosis
- A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication
- Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or, symptoms controlled by medication
- Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation
- Occupational and social impairment with reduced reliability and productivity
- Occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and/or mood
- Total occupational and social impairment

Claimant name: BEE, WILLIAM

Account #: 3037604.1.3

Date of Examination: 01/23/2013

DocuSign Envelope ID: 958C0D1C-8617-41A9-B105-6FA2F9FF5DC7

**Initial Post Traumatic Stress Disorder (PTSD)
Disability Benefits Questionnaire**
* Internal VA or DoD Use Only *

Carline Charles for nightmares and was diagnosed with Acute Reaction to Stress. He was seen there also on 6/15/2010.

On 6/16/2010, the Claimant was seen at LSI Neurology by Eileen Grass for headaches and was diagnosed with a history of concussion and was advised to take Tylenol. He was seen there also on 6/14/2010 by Mary Larchev who had a final impression of "mild TBI symptomatic".

He was seen at Carolina Psychological Health Services on 7/28/2010 by neuropsychologist, Dr. Karen Johnson, and after tests were administered, was diagnosed with Cognitive Disorder and Chronic, Moderate, PTSD, with a GAF of 40 to 45.

2 History

a. Relevant Social/Marital/Family history (pre-military, military, and post-military): The Claimant grew up in Wooster, Ohio. His parents divorced when he was four years old and he had a step-father who was active in his life. He had a "positive" relationship with both his father and step-father but now has minimal contact with them. He has little to no contact with his mother. He has one sibling with whom he had an "ok" relationship pre-military but now has little contact.

The Claimant has been married to his wife since 2006. They suddenly separated Friday and he described their relationship as "likely to split up". She is currently in Pennsylvania. They have a four year old son whom he loves.

b. Relevant Occupational and Educational history (pre-military, military, and post-military): The Claimant, Staff Sergeant William Bee, E-6, 30, is here today, January 23, 2013, at QTC MEDICAL SERVICES - CAMP LEJEUNE, JACKSONVILLE, NC, for an evaluation pertaining to Post Traumatic Stress Disorder and "Depression Condition", as requested by the Veterans Administration (VA). The Claimant has been serving (and is currently active) in the United States Marine Corps for nearly 13 years, from June 19, 2000 to this present time.

His EAS is April 1, 2013. His terminal leave is scheduled to begin on February 18, 2013. The Claimant served four tours of duty in Afghanistan during the following times: (1) from September, 2001 to April, 2002; (2) from October, 2002 to December, 2002; (3) from December, 2007 to September, 2008, and (3) from December, 2009 to June, 2010. He was deployed to Cuba from March, 2003 to May, 2003. His MOS is 0369, Infantry Unit Leader. He served in recruiting duty from 2004 to 2007. His original MOS was 0311.

The Claimant is a high school graduate. While in high school, he participated in band and wrestling.

c. Relevant Mental Health history, to include prescribed medications and family mental health (pre-military, military, and post-military): His mother was diagnosed with depression. He recalls that he was seen and treated at Camp Lejeune for a couple of months in 2010 and/or 2011, and in Germany for a couple of weeks following the IED blast and MedEvac. He had a 6 hour evaluation with neuropsychologist Dr. Johnson in which he was diagnosed with a Cognitive Disorder following the IED blast. He regularly sees Dr. Gaul, his primary care doctor, whom he finds very helpful.

He currently takes Melatonin 3 mg QHS, Zofran 4 mg, Venlafaxine 150 mg QD, Propanolol 10 mg QD for nightmares, Clonazepam 0.5 mg QD, Trazodone 100 mg QHS, and Amitriptyline 10 mg QHS.

d. Relevant Legal and Behavioral history (pre-military, military, and post-military): None known.

e. Relevant Substance abuse history (pre-military, military, and post-military): The Claimant currently drinks one to five beers per day.

Claimant name: BEE, WILLIAM

Account #: 3037604 1 3

Date of Examination: 01/23/2013

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
23 Jan 2009 0836	Facility: NH Camp LeJeune	Clinic: Deployment Health Services	Provider: PELLAND, RAYMOND J

18/Oct/2009
 Marital Status: Married
 Status Prior to Deployment: Active Duty
 Since return from deployment I have: Maintained/returned to previous status
 Location of Operation: Afghanistan (Months: 8)
 Total Deployments in Past 5 Years:
 OIF:
 OEF: 1
 Other:
 Current Unit of Assignment: a co 1/6 2nd mardiv
 Current Assignment Location: a co 1/6 2nd mardiv
 Current Contact Information:
 Phone: (814)241-4486
 Cell:
 DSN:
 Email:
 Address:
 4310 roberton st

 jacksonville.
 nc
 usa
 28543

Point of Contact who can always reach you:
 Name: Bee, Bobbie
 Phone: 814-241-2788
 Email:
 Address:
 4310 roberton st

 jacksonville.
 nc
 usa
 28543

1. Overall, how would you rate your health during the PAST MONTH?
 Good
2. Compared to before your most recent deployment, how would you rate your health in general now?
 About the same as before I deployed
3. During the past 4 weeks, how difficult have physical health problems (illness or injury) made it for you to do your work or other regular daily activities?
 Not difficult at all
4. During the past 4 weeks, how difficult have emotional problems (such as feeling depressed or anxious) made it for you to do your work, take care of things at home, or get along with other people?
 Somewhat difficult
5. Since you returned from deployment, about how many times have you seen a healthcare provider for any reason, such as in sick call, emergency room, primary care, family doctor, or mental health provider?
 No visits
6. Since you returned from deployment, have you been hospitalized?
 No
7. During your deployment, were you wounded, injured, assaulted or otherwise physically hurt?
 Yes
- 7a. If YES, are you still having problems related to this wound, assault, or injury?
 No
8. In addition to wounds or injuries you listed in question 7., do you currently have a health concern or condition that you feel is related to your deployment?
 No

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMP/SSN: [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: 814-241-4486	Unit: 31301K61	
PCat: M1 USMC ACTIVE DUTY	Tel W: 814-241-4486	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status:	PCM:	
Insurance: No		Tel. PCM:	

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE	
23 Jan 2009 0836	Facility: NH Camp LeJeune	Clinic: Deployment Health Services Provider: PELLAND, RAYMOND J

8a. If YES, please mark the item(s) that best describe your deployment-related condition or concern:

9a. During this deployment, did you experience any of the following events? (Mark all that apply)

- (1) Blast or explosion (IED, RPG, land mine, grenade, etc.)
No
- (2) Vehicular accident/crash (any vehicle, including aircraft)
No
- (3) Fragment wound or bullet wound above your shoulders
No
- (4) Fall
No
- (5) Other event (for example, a sports injury to your head). Describe:
Yes: Knocked unconscious from round hitting a wall and being hit by fragments

9b. Did any of the following happen to you, or were you told happened to you, IMMEDIATELY after any of the event(s) you just noted in question 9a.? (Mark all that apply)

- (1) Lost consciousness or got "knocked out"
Yes
- (2) Felt dazed, confused, or "saw stars"
Yes
- (3) Didn't remember the event
Yes
- (4) Had a concussion
No
- (5) Had a head injury
No

9c. Did any of the following problems begin or get worse after the event(s) you noted in question 9a.? (Mark all that apply)

- (1) Memory problems or lapses
No
- (2) Balance problems or dizziness
No
- (3) Ringing in the ears
No
- (4) Sensitivity to bright light
No
- (5) Irritability
No
- (6) Headaches
No
- (7) Sleep problems
No

9d. In the past week, have you had any of the symptoms you indicated in 9c.? (Mark all that apply)

- (1) Memory problems or lapses
- (2) Balance problems or dizziness
- (3) Ringing in the ears
- (4) Sensitivity to bright light
- (5) Irritability
- (6) Headaches
- (7) Sleep problems

10. Do you have any persistent major concerns regarding the health effects of something you believe you may have been exposed to or encountered while deployed?

- No
- 10a. If YES, please mark the item(s) that best describe your concern:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
FMP/SSN: 20 [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: [REDACTED]	Unit: 31301K61	
PCat: M1 USMC ACTIVE DUTY	CS: [REDACTED]	Outpt Rec; Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	Status: [REDACTED]	PCM: [REDACTED]	
Insurance: No		Tel. PCM: [REDACTED]	

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
23 Jan 2009 0836	Facility: NH Camp LeJeune	Clinic: Deployment Health Services	Provider: PELLAND, RAYMOND J

11. Since return from your deployment, have you had serious conflicts with your spouse, family members, close friends, or at work that continue to cause you worry or concern?
No

12. Have you ever had any experience that was so frightening, horrible, or upsetting that, IN THE PAST MONTH, you.....?

- a. Have had nightmares about it or thought about it when you did not want to?
Yes
- b. Tried hard not to think about it or went out of your way to avoid situations that remind you of it?
No
- c. Were constantly on guard, watchful, or easily startled?
No
- d. Felt numb or detached from others, activities, or your surroundings?
No

13a. In the PAST MONTH, Did you use alcohol more than you meant to?
No

13b. In the PAST MONTH, have you felt that you wanted to or needed to cut down on your drinking?
No

13c. How often do you have a drink containing alcohol?
2 to 3 times a week

13d. How many drinks containing alcohol do you have on a typical day when you are drinking?
3 or 4

13e. How often do you have six or more drinks on one occasion?
Less than monthly

14. Over the PAST MONTH, have you been bothered by the following problems?

- a. Little interest or pleasure in doing things
Not at all
- b. Feeling down, depressed, or hopeless
Not at all

15. Would you like to schedule a visit with a healthcare provider to further discuss your health concern(s)?
No

16. Are you currently interested in receiving information or assistance for a stress, emotional or alcohol concern?
No

17. Are you currently interested in receiving assistance for a family or relationship concern?
No

18. Would you like to schedule a visit with a chaplain or a community support counselor?
No

Provider Review and Interview

1. Review symptoms and deployment concerns identified on form:
Confirmed screening results as reported.

2. Ask behavioral risk questions. Conduct risk assessment.

a. Over the PAST MONTH, have you been bothered by thoughts that you would be better off dead or of hurting yourself in some way?
No

IF YES, about how often have you been bothered by these thoughts?

b. Since return from your deployment, have you had thoughts or concerns that you might hurt or lose control with someone?
No

3. If member reports positive or unsure response to 2a. or 2b., conduct risk assessment.

a. Does member pose a current risk for harm to self or others?

b. Outcome of assessment

4. Alcohol screening result

Potential alcohol problem (positive response to either question 13a. or 13b. and/or AUDIT-C (questions 13c.-e.) score of 4 or more for men or 3 or more for women):
Refer to PCM for evaluation: No.

5. Traumatic Brain Injury (TBI) risk assessment

Potential TBI with persistent symptoms, based on responses to question 9d.
Refer for additional evaluation: No

6. Record additional questions or concerns identified by patient during interview:

Name/SSN: BEE, WILLIAM OLAS [REDACTED]

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]

FMP/SSN: 20 [REDACTED]

Tel H: [REDACTED]

Rank: STAFF SERGEANT

DOB: [REDACTED]

Tel W: [REDACTED]

Unit: 31301K61

PCat: MI I USMC ACTIVE DUTY

CS: [REDACTED]

Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC

M/C Status: TRICARE PRIME (ACTIVE DUTY)

Status: [REDACTED]

PCM:

Insurance: No

Tel. PCM:

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HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
12 Oct 2010 1009	Facility: NH Camp LeJeune	Clinic: Neurology Clinic	Provider: GROVE, RANDALL P

Testosterone
Testosterone Site/Specimen 22 Jun 2010 0903
SERUM 344 <i>

Lab Result Cited by GROVE, RANDALL P @ 12 Oct 2010 1021 EDT
Ceruloplasmin Site/Specimen 22 Jun 2010 0903
Ceruloplasmin SERUM 23.2 <i>

A/P Written by GROVE, RANDALL P @ 12 Oct 2010 1032 EDT
 1. CONCUSSION WITH LOC 30 MINUTES OR LESS
 2. History of traumatic brain injury (PERSONAL HISTORY OF TRAUMATIC BRAIN INJURY (TBI), GLOBAL WAR ON TERRORISM (GWOT) RELATED, HIGHEST LEVEL OF SEVERITY MILD (GLASGOW COMA SCALE 13-15), LOC < 1HR, POST TRAUMA AMNESIA < 1HR)
 3. LATE EFFECT OF INTRACRANIAL INJURY
 4. headache
 5. memory lapses or loss
 6. anxiety
 7. insomnia

Disposition Written by GROVE, RANDALL P @ 12 Oct 2010 1032 EDT
 Released w/o Limitations
 Follow up: as needed
 Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding
 30 minutes face-to-face/floor time. >50% of appointment time spent counseling and/or coordinating care.

Note Written by GROVE, RANDALL P @ 12 Oct 2010 1029 EDT
 fu
 fu
S: S/P blast - TBI with LOC
 Headaches - 1/week - Tylenol works
 Sleep - better - off Melatonin and Prazosin
 Memory impairment - better - finished with Speech
 On limited duty until December 17, 2010. EAS is 2013. Case manager is Carolyn.

O: VS as recorded
 Labs = norma

A: History of blast exposure and subsequent concussion with:

Headaches - better
 Sleep problems - better
 Cognitive impairment - improved
 Balance problems - improved

P: 1. Follow-up prn
 2. Stop LIMDU

The diagnosis and treatment plan was discussed at length and in detail with the patient. Medication risks and benefits, reproductive issues, if any, were discussed with the patient. No barriers to learning were identified. Patient is to follow up with PCM, follow up with neurology as scheduled and PRN.

Randy Grove, MPAS, PA-C

Name/SSN: BEE, WILLIAM OLAS [REDACTED]		Sponsor/SSN: BEE, WILLIAM OLAS [REDACTED]	
EMP/SSN: [REDACTED]	Sex: M	Rank: STAFF SERGEANT	
DOB: [REDACTED]	Tel H: [REDACTED]	Unit: 31301K51	
PCat: MII USMC ACTIVE DUTY	Tel W: [REDACTED]	Outpt Rec. Rm: CAMP JOHNSON BRANCH CLINIC	
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS: [REDACTED]	PCM:	
Insurance: No	Status:	Tel. PCM:	

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DEPARTMENT OF VETERANS AFFAIRS
St Petersburg Regional Office
PO Box 1437
Bay Pines, FL 33731

WILLIAM O. BEE

VA File Number
[REDACTED]

Represented By:
DISABLED AMERICAN VETERANS

Rating Decision
October 10, 2013

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era. You served in the Marine Corps from June 23, 2000 to April 1, 2013. Rating decision dated September 12, 2013 deferred the following issues pending further development. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. Service connection for post traumatic stress disorder, primary insomnia, generalized anxiety disorder, panic disorder with agoraphobia, major depressive disorder (claimed as PTSD, depression) is granted with an evaluation of 70 percent effective April 2, 2013.
2. Service connection for traumatic brain injury (TBI), post concussion syndrome, cognitive impairment is granted with an evaluation of 70 percent effective April 2, 2013.
3. Basic eligibility to Dependents' Educational Assistance is established from April 2, 2013.

HEALTH RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

Patient: BEE, WILLIAM OLAS
Treatment Facility: LANDSTUHL REGIONAL MEDCEN
Patient Status: Outpatient

Date: 16 Jun 2010 0910 WEDT
Clinic: LSE NEUROLOGY

Appt Type: SPEC
Provider: GRASS, EILEEN C

Reason for Appointment: visit for: examination of subpopulation
Appointment Comments:
ff

Injury/Accident Written by GRASS, EILEEN C @ 16 Jun 2010 1013 WEDT
Date of Accident/Injury: 08 Jun 2010
Place of Accident/Injury: afghanistan
Related Cause Code(s): OA-Other Accident

Vitals

Vitals Written by RANDALL, DARRIE C @ 16 Jun 2010 0848 WEDT
BP: 105/55, HR: 74, T: 97.5 °F, HT: 5' 8", WT: 160 lbs, SpO2: 98%, BMI: 24.33, BSA: 1.859 square meters,
Tobacco Use: Yes, Alcohol Use: No, Pain Scale: 0 Pain Free
Comments: Pt is allergic to cylet

SO Note Written by GRASS, EILEEN C @ 16 Jun 2010 1015 WEDT

Chief complaint

The Chief Complaint is: POSITIVE TBI SCREENING.

History of present illness

The Patient is a 28 year old male.
He reported: Encounter Background Information: Neurology Consultation Note
History of Present Illness:
Twenty-eight year old RHD marine sent from down range for ENT evaluation for bilateral perforated TM's with hearing loss s/p IED blast. Was on patrol, took his squad into a building which set off three IED's, Wearing full gear. Next memory patient had was waking up in CT scanner. Two members of his squad were KIA. Reports headaches, diffuse for two days only. Present sx's of: intermittent nausea, tinnitus, hearing loss, balance issues, short term memory loss, decreased concentration, insomnia, nightmares. Has been evaluated by Behavioral Health at LTRMC-Alta notes not yet available. Patient states was informed had acute stress reaction and was placed on medication. Is now sleeping with medication. Notes state CT of head, chest, abdomen and pelvis were normal. Prior hx of concussion x one last deployment shot at with wall behind him collapsing. Experienced LOC. MOS is infantry, SM's fifth deployment

ROS: A comprehensive neurologic review of systems was performed and was unremarkable except as described above. Further review of constitutional, HEENT, cardiovascular, respiratory, GI, GU, musculoskeletal, integumentary, neurologic, psychiatric, endocrine, and hematologic systems was negative, except as detailed in the HPI.

Past Medical History: [PMH] no reported chronic problems except sx's as listed, hx of migraines as adolescent, surgery-umbilical hernia surgery as child, surgery for varicella in 2006

Medications: Quetiapine 25 mg po hs, mefloquine 250 mg po once weekly, Tylenol 325 mg po prn
Allergies: [Allergies] Cylet

Family History: [Family] father-alive-MI at age of 26, fraternal grandfather expired at age 48 from MI
Social History: [Social] tobacco-1/2 pack per day for ten years, ETOH-none, married, one child.

Physical findings

Vital signs:

• Vital signs: Examination:
Vital Signs: Blood pressure, pulse, respiratory rate, and temperature are as documented and reviewed in AHLTA.
Gen: Awake, alert, NAD
HEENT: Oral mucosa moist. Sclerae anicteric.
Neck: Supple. No bruits; + Pulm: Clear bilaterally.
Cardiac: Regular rate and rhythm with no murmur or other adventitial sounds.
Extremities: No cyanosis, clubbing or edema.
Skin: Free of gross lesions, normal turgor and temperature.
Mental Status: The patient supplied the history in a coherent and consistent manner with normal attention and concentration. Oriented. Language was normal. Recent and remote memory was intact. Fund of knowledge, as evidenced during history taking was adequate. Mood appropriate with normal affective range.
Cranial Nerves: Optic discs appeared sharp on direct ophthalmoscopy present bilaterally. Visual fields were full to confrontation. PERRLA. No ptosis. Extraocular movements were full and conjugate, without nystagmus. Facial strength was normal. Tongue and palate strength appear normal. Hearing intact to finger rubbing. No dysarthria. Normal accessory motor strength.
Motor: Normal muscle tone and bulk throughout.

Name/SSN: BEE, WILLIAM OLAS

Sex: M

Sponsor/SSN: BEE, WILLIAM OLAS

FMP/SSN: 20

Tel H:

Rank: STAFF SERGEANT

DOB:

Tel W:

31301K61

PCat: MIT USMC ACTIVE DUTY

CS:

Outpt Req. Rm: CAMP JOHNSON BRANCH CLINIC

MC Status: TRICARE PRIME (ACTIVE DUTY)

Status:

PCM:

Insurance: No

Tel. PCM:

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MICHAEL BLUMENFIELD, M.D.

Board Certified in Psychiatry and Psychosomatic Medicine
by the American Board of Psychiatry and Neurology
5901 Nita Avenue
Woodland Hills, CA 91367

March 8, 2018

Latham & Watkins, LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

Reference Examinee: William Bee
Date of Birth: [REDACTED]

The patient is a 35-year-old male who is a U.S. Marine Veteran who was interviewed by me at the request of the above-referenced legal firm. Prior to the interview, I perused approximately 1500 pages of medical records that were supplied to me and also read a 25-page-summary of these records prepared by CES, Inc. The summary is consistent with the records I have reviewed. I have included the summary as an appendix to this report and I have highlighted in bold some of the entries which I thought were relevant. I am also noting that I have been asked to address specific questions which are of interest to the patient's attorney, Denis Griffin.

1. To what extent, based on a review of Sergeant Bee's medical records and interview of him would he have had been able to fulfill the duties of a rifleman in the Marine Corps following his injury through the discharge in 2013 and was he fit at the time of his discharge to perform the duties of a rifleman and a squad leader in the Marine Corps?
2. What might a full medical board have been likely to find with regard to Sergeant Bee's condition had it been convened following his injury in 2010?

I have also been asked to provide a discussion of the potential link between Sergeant Bee's history of traumatic brain injury's (TBI) and subsequent psychiatric disorders such as Post Traumatic Stress Disorder (PTSD), as well as comments on the extensive severity of his psychiatric and neurological conditions.

Mr. Bee was interviewed by me via Skype (video) on March 7, 2018, as he was living in Jacksonville, North Carolina at the time. He was interviewed (at his request) in privacy, but his wife was allowed to join for several minutes at the end of the interview.

Mr. Bee related in a friendly and cooperative manner. He came across as sincere and did not have trouble expressing himself. Early in the interview, he noted that his wife thought that he should have asked for medical retirement, but he believed that if you are a Marine in the infantry you do not ask for a medical retirement and if you "want a career, you don't do light duty."

Examinee: **William Bee** Page 9 of 30
Date of Birth: [REDACTED]

07/23/2007 Jeff Alvis, LTMC, USN - 1st Battalion 6th Marines Battalion Aid Station – The claimant complains of skin irritation. Assessment is poison ivy. Plan included Calamine lotion and prednisone.

09/28/2007 KF Eten, provider - Periodic Health Assessment – Unremarkable findings.

12/01/2007 William O. Bee, Claimant – Adult Screening and Immunization Documentation Form – 2009 H1N1 Influenza Monovalent Vaccination Program. – The claimant notes that he has received the 2009-2010 seasonal influenza vaccine.

01/08/2008 Pre-Deployment Assessment – Service branch is Marine Corps. Component is active duty. Location of operation is Southwest Asia. General health is rated as very good.

01/26/2008 Dana Philipp, RN - Emergency Care and Treatment – Chief complaint is fever. Treated with Motrin 800mg.

02/08/2008 Susan A. Holt – Optometry – Eye Exam – Assessment notes refractive error – myopia. Work status notes released without limitations.

03/04/2008 William Bee, Claimant – Malaria Chemophophylaxis Education Sheet – The claimant is to be placed on malaria chemophophylaxis while deployed to a malaria epidemic area.

03/10/2008 M.L. Thompson, HMC, IDC, USN - Smallpox Vaccination Initial Note – Smallpox vaccine administered.

01/22/2009 **Raynomd Pelland - Post-Deployment Health Re-Assessment – Service branch is Marine Corps.**
Arrival date of 3/12/08 with departure date of 10/18/09.
Component was active duty.
Health is rated about the same as before deployment.
Emotional problems cause some difficulties at home and work.
He was wounded during employment when he was knocked unconscious after being hit by a round.
Alcohol screening result notes potential alcohol problem.
Traumatic brain injury risk assessment notes potential TBI with persistent symptoms, based on responses.