DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[redacted]
Docket No: 818-20
Ref: Signature Date

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 14 April 2021. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 12 February 2021, which was previously provided to you.

You served honorably during a period of active duty in the Marine Corps from 30 November 1976 to 19 April 1977. You entered an additional period of active duty in the Marine Corps on 6 June 1978. You received nonjudicial punishment for Article 86, unauthorized absence (UA) on 3 August 1978. You then entered into multiple periods of UA between 2 August 1978 and 14 August 1979 for a total of approximately 219 days. On 27 December 1980 you were apprehended by civilian authorities for second degree murder and use of a firearm, while you were in a deserter status. At that time were in a UA status of approximately 451 days. On 9 July 1981 you were convicted of second degree murder and use of a firearm in a felony and sentenced to 20 years of confinement with 14 years suspended for a period of 10 years.

Your record is incomplete in that it does not contain all of the details pertaining to your administrative separation. Absent of such evidence, the Board relied upon the presumption of

regularity and presumed that the officials acted in accordance with governing law/policy and in good faith. Notwithstanding, the available information in your record reveals that on 23 February 1982, your Commanding Officer (CO) forwarded a request for your separation to the separation authority due to your civilian conviction. The CO's request included a notification of rights which appears to have been signed by you on "1/4/82." On 12 March 1982, the separation authority approved the request and directed your discharge to be effective 26 March 1982, with an Other Than Honorable characterization of service.

You contend you are not guilty of your civilian conviction and acted in self-defense. You state your civilian case was dismissed and then reinstated on direct indictments. You state you signed your discharge documents under duress because your chain of command said they would charge you at a court-martial after you were released from prison if you did not. Additionally, you provided a letter from your outpatient individual therapist indicating you meet the diagnostic criteria for PTSD related to events in your military service. Your therapist stated specific events include physical abuse by your drill sergeant and the incident that led to your civilian conviction. You further contend you have been a model citizen.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contentions noted above, and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that no documentation or information was provided to refute the guilty verdict adjudicated by the legal system. Additionally, the AO concluded that the preponderance of available objective evidence failed to establish you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or that your in-service misconduct could be attributed to a mental health condition. Based upon this review, the Board concluded that these potentially mitigating factors were insufficient to warrant relief, and specifically, the Board determined that your misconduct outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/6/2021

[redacted]

Executive Director
Signed by: [redacted]