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

Docket No: 2836-21
Ref: Signature Date

Dear Petitioner:

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 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 04 October 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, 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider dated 30 July 2021, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the United States Marine Corps and began a period of active duty on 12 July 1988. On 3 March 1989, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA). Your first UA occurred when you left your appointed place of duty (class), and your second UA occurred when you failed to go to your appointed place of duty (study hall). On 8 March 1989, you were counseled regarding these deficiencies and advised that failure to take corrective action might result in administrative separation or judicial proceedings. On 10 September 1990, you were counseled for driving while your driving privileges were

revoked. On 7 January 1991, you were found guilty at a special court-martial (SPCM) of two specifications of wrongfully violating a lawful general order when you wrongfully operated a motor vehicle while your privileges were revoked and for driving while intoxicated (DWI). You were sentenced to confinement for 45 days and reduction in rank to E-1. On 1 July 1991, you were again counseled for DWI and for underage drinking. Although provided with an opportunity to submit a statement in rebuttal you chose not to do so.

On 26 September 1991, you received a second NJP for conspiring to assault Marines by throwing a white phosphorous grenade into the barracks where they were housed. On 27 September 1991, you received another counseling warning concerning your frequent involvement with authorities. This counseling entry further documented your disciplinary infractions were establishing a pattern of misconduct. From 1 November 1991 through 1 February 1992, you received several counseling entries stating although eligible you were not recommended for advancement due to your NJPs.

On 31 January 1992, the Consolidated Drug and Alcohol Center evaluation report reflects you were an alcohol dependence treatment failure. On 11 February 1992 you received a third NJP for operating a vehicle while you were intoxicated. While being notified of your Commanding Officer's intent to recommend you be discharged with an other than honorable (OTH) characterization of discharge due to a pattern of misconduct, you waived your rights to consult with counsel, to submit a statement on your behalf, and to have your case heard at an administrative discharge board (ADB). On 26 March 1992, the staff judge advocate found your proceedings were sufficient in law and fact. On 27 March 1992, the separation authority directed you be discharged and on 7 April 1992, you were discharged with an OTH due to pattern of misconduct.

Your request was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014 and the "Clarifying Guidance to Military Discharge Review Board 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" memorandum of 25 August 2017.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you developed a mental health condition during your military service which might have mitigated the misconduct that led to your OTH. The AO noted your in-service records did document the aforementioned misconduct as well as unauthorized absences. The AO further noted you were evaluated at least three times for alcohol abuse/dependence in 1990, and at least once in 1991 and 1992. Additionally, the AO noted that you underwent level II and level III treatment and in the evaluation of January 1992, it was noted that "treatment efforts have been exhausted." The AO opined that the preponderance of objective evidence failed to establish you were diagnosed with an unfitting mental health condition, suffered from an unfitting mental health condition at the time of your military service, or your in-service misconduct could be mitigated by an unfitting mental health condition.

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 desire to upgrade your discharge and contention that your in-service misconduct was due to an undiagnosed mental health illness. The Board further noted, aside from your DD Form 214, you did not submit character letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct outweighed these mitigating factors. Lastly, the Board concurred with the AO. 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 the 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,

10/22/2021

Executive Director