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

[redacted]
Docket No: 5327-21
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 Board waived the statute of limitations 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 7 January 2022. 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 the 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 to 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You initially attempted to enlist at Recruiting Station (RS) [redacted] with a record of processing that asserted you were single with no dependents, but which listed five pre-service criminal offenses. RS [redacted] requested approval of a moral waiver on 17 June 1993 which was denied on 7 July 1993 after the discovery of your undisclosed dependents. You subsequently applied for enlistment at RS [redacted] on 29 November 1993 with a record of processing which identified your dependents but asserted that you had never previously been denied enlistment; your contemporaneous security questionnaire further denied any arrests, charges, or citations, and you personally initialed all of these responses. RS [redacted] initiated a request for a dependent waiver,

and you began a period of active duty in the Marine Corps on 8 December 1993. An interview conducted on 15 December 1993, documented in your record of waiver action, records that you "stood at the MOT [moment of truth] to disclose a warrant for a bad check," which you claimed, at that time, to have found out about 1 day prior to shipping, did not think was important, and thought your wife would "pay it." Inquiry into your police record revealed an open felony warrant for forgery dating from September of 1993. You were recommended for administrative discharge on 21 December 1993 based on fraudulent enlistment due to your failure to disclose your police record. This letter documents that you were not evaluated by a psychologist during processing because you did not exhibit any characteristics of mental or emotional illness. Upon notification of this action on 23 December 1993, you were afforded the opportunity to exercise all available rights, you waived your right to counsel and elected not to submit a statement. You were discharged with an entry-level separation for fraudulent enlistment on 28 December 1993, at which time your 20-day period of service was identified as uncharacterized.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge to an Honorable characterization of service and your contentions that you did not fraudulently enlist because you had no prior knowledge of the warrant at the time of your enlistment since it was issued after you had already reported to basic training, and that you did not discover this news until receiving a letter from your mother on 20 December 1993 informing you of the warrant. You claim this news was "shocking" since you had not been in the state issuing the warrant for months prior to enlisting and argue that, ultimately, the charges against you were dismissed. However, you have provided no evidence to the Board in support of that contention. The Board further considered your claim that you suffered a nervous breakdown while being processed for separation, were hospitalized for major depressive disorder the year following your separation, and that you now have a rating from the Department of Veteran's Affairs (VA) for service-connected disability of 90 percent being paid at the 100 percent rate with special monthly compensation due to the type and severity of your service-connected disabilities, a claim which you contend that the VA permitted you to file because you "had no due process."

In the absence of any documents attesting to your clinical diagnosis, clinical history of onset, symptoms comprising a mental health diagnosis, or description of how such condition related to your misconduct, the Board considered the AO in making its determination. The AO noted that your VA determination does not specify any diagnosis or condition and your in-service records did not contain any diagnosed mental health conditions or indication of behaviors or symptoms which might suggest you suffered a mental health condition during your 20-day period of service. Rather, the only record of your in-service mental health status is the recommendation for your separation, which expressly affirmed that you had not exhibited any characteristics of mental or emotional illness. Thus, objective evidence failed to establish that you suffered from an unfitting mental health condition or that such condition might mitigate your fraudulent enlistment.

In its deliberations, the Board concurred with the AO's assessment that your records contained insufficient evidence to establish that you suffered a mental health condition at the time of your military service or that such a condition, even if one existed, reasonably could have mitigated the fraud you committed at the time that you applied for enlistment. In accordance with the Kurta

memo, the Board also acknowledged that premeditated or intentional misconduct, such as fraud, is not generally excused by mental health conditions. To this extent, the Board observed that your service documents contain multiple records of processing for enlistment, the earliest of which reflects that you understood the requirement to disclose your history of arrests and police involvement. Rationally, the fact that your initial moral waiver was ultimately denied after the discovery of your undisclosed dependents should have served to inform you and emphasize the importance of candor in the enlistment application process. However, at the time of your second attempt to enlist, you did not disclose your extensive pre-service history of multiple arrests – all of which pre-dated your September 1993 fraud arrest – and also elected not to disclose the fact that you had previously been denied enlistment. The Board also notes that your current contentions regarding the circumstances and timing of the discovery of the fraud warrant are wholly inconsistent with the facts contained in your service record, to which you admitted at that time, and in which you acknowledged your discovery of the warrant prior to reporting for basic training. You stated in an interview on 15 December 1993 that you assumed the warrant would be taken care of when your wife "paid it," which is contrary to your contention that the discovery of the warrant was "shocking" as you now purport in your claim. Further, regardless of the ultimate outcome of the fraud charges and warrant, the records from your second enlistment application still clearly reflect that you failed to disclose at least five other previous arrests which had formed the basis of your previously denied moral waiver and deliberately initialed the response of "no." Finally, you have submitted no evidence in support of your contention that the VA determined your discharge resulted from any defect in due process. After a thorough review of your administrative separation processing records, the Board found no indication of a process defect that might support your contention.

Based upon this review, the Board concluded that the potentially mitigating factors and allegations of injustice and error which you contended, even when considered in their totality, were insufficient to warrant relief. Specifically, the Board determined that your misconduct, specifically fraud which you committed at the time of your enlistment and which formed the basis of your uncharacterized, entry-level separation, outweighed the totality of the evidence you presented. Accordingly, 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,

1/25/2022

[redacted]

Executive Director
Signed by: [redacted]