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

[redacted]
Docket No: 3993-22
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful 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 limitation 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 23 September 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 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). Additionally, 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 an AO rebuttal, you chose not to do so.

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

You enlisted in the Navy on 27 January 2000. Your pre-enlistment physical, on 23 December 1999, and self-reported medical history both noted no neurologic or psychiatric abnormalities, conditions, and/or symptoms. On your medical history, you specifically denied ever attempting suicide, denied ever being treated for a mental condition, and denied ever having any history of depression or excessive worry.

On 17 May 2000, you were evaluated at the [redacted]. You were diagnosed with a personality disorder not otherwise specified with borderline and antisocial features, existed prior to entry to service (EPTE). The [redacted] Medical Officer (MO) noted that you revealed pre-service psychiatric treatment at age 18, suicidal ideation at age 11, and pre-service self-injurious behavior with a hot knife. The MO noted that you stated you were going to stab yourself in the throat with scissors until a shipmate at RTC stopped you, and that you also had thoughts of stabbing yourself in the throat with a pencil. The MO recommended your entry-level separation (ELS) due to a disqualifying psychiatric condition affecting your potential for performance of expected duties and responsibilities on active duty.

On 22 May 2000, your command provided you notice that you were being processed for an administrative discharge from the Navy by reason of defective induction and enlistment into the naval service due to erroneous enlistment as evidenced your personality disorder that existed prior to entry into the naval service. You elected in writing to waive your rights to consult with counsel, submit a written statement to the separation authority for consideration, and to General Court-Martial Convening Authority review of your discharge. Ultimately, on 2 June 2000, you were discharged from the Navy with an uncharacterized ELS, and assigned a separation code of "JFC" and an "RE-4" reentry code. The "JFC" separation code corresponds to the narrative reason for separation of "erroneous entry," and is the appropriate designation in erroneous enlistment cases involving a pre-existing medical condition or mental health history such as yours that would be disqualifying for active duty service. In this regard, you were assigned the correct characterization, narrative reason for separation, and reentry code based on your factual situation, as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge status and contentions that: (a) you have been labeled by the Navy on your DD214 as being below average intelligence and mentally the equivalent to a serial killer, (b) the [redacted] MO misquoted you and on purpose used words to disqualify you for benefits you are entitled to, (c) you have three college degrees and worked as a paramedic for seventeen years, (c) you were never diagnosed pre-service with any mental health conditions period, (d) you broke your leg at RTC and developed sleep problems which resulted in depression, insomnia, nightmares, and mood swings, (e) you served during a time when you should have been receiving the help you needed but the Navy tossed you aside with a stain on your service record, and (f) your service record has disqualified

you for certain employment opportunities and prevented you from receiving Department of Veterans Affairs benefits.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 28 July 2022. The Ph.D. stated in pertinent part:

> Petitioner was appropriately referred and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. There is no evidence this diagnosis was in error. Unfortunately, he has provided no medical evidence to support his claims. The circumstances surrounding his separation appear to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances of his separation could be attributed to a mental health condition, other than his diagnosed personality disorder."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concurred with the AO regarding any mental health issue determinations, and also separately concluded that you were appropriately separated with an ELS because you clearly had a disqualifying mental health history and a personality disorder upon entry into the Navy.

The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contained no known errors. The Board determined that your clinical diagnosis and separation recommendation was clinically appropriate. The Board noted that the [redacted] MO clearly formed their diagnosis based, in part, on information personally provided by you during your evaluation, which included pre-service suicidal ideation and self-injurious behavior. The Board concluded that the objective evidence established you were appropriately diagnosed with a personality disorder on active duty that EPTE, and that your ELS characterization and RE-4 reenlistment code was appropriate for the circumstances underlying your separation.

The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. The Board further determined that you had a legal, moral and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your entire mental health history you likely would have been disqualified from enlisting. The Board noted that the [redacted] MO on 17 May 2000 stated, in no uncertain terms, that your condition was sufficiently severe to affect your performance of expected duties and responsibilities on active duty. Based on your precise factual situation and circumstances at the time of your ELS discharge, the Board concluded that your command was justified in processing you for discharge and assigning you an RE-4 reentry code.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Navy cases where processing under a more serious basis is appropriate and where characterization of service under other than honorable conditions (OTH) upon discharge is warranted. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your ELS discharge and RE-4 reentry code, and even under the liberal consideration standard, the Board concluded that your case clearly merited your receipt of an ELS with an RE-4 reentry code, and that such characterization and reentry code were proper and in compliance with all DoN directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional/educational accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading your characterization of service. 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,

9/28/2022

[redacted]

Executive Director

Signed by: [redacted]