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

[redacted]
Docket No. 7384-22
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 25 January 2024. 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 Office of the Secretary of Defense concerning discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense concerning discharge upgrade requests by PTSD or TBI (Carson Memo) (collectively "Clarifying Guidance").

A review of your record shows that you enlisted in the Navy and commenced active duty on 30 January 2007. According to the statement you provided with your application, in 2008, you were knocked unconscious and broke your jaw during boxing training in preparation for your deployment to [redacted]. You also state that, from September 2009 to April 2010, you served with a SEAL team in [redacted], during which an incident occurred relating to exposure to the blast of a rocket-propelled grenade. You provided several buddy statements to support your recounting of this incident. However, you continued your service upon your return from [redacted]. During your service you consistently received positive performance evaluations, including at the end of your service. For example, your evaluation through 26 October 2015

marked you as "early promote," noted that you had recently been awarded the Navy Achievement Medal and described you as a "skilled manager and mentor." After the issuance of this evaluation, you were advanced to Chief Petty Officer. Advancement to Chief Petty Officer is highly competitive in the Navy, is a coveted mark of service, and a testament to your dedication, quality of service, and your leadership capability, particularly within your rating. Your evaluation through the end of your service, which was your first evaluation as a Chief, marked you as "early promote," set forth several of your tangible positive accomplishments to your unit, and described you as a "dedicated leader with unlimited potential."

During your service, you sought medical treatment for several conditions, and you provided medical records in support of your petition. Specifically, among others, you provided medical documentation from April 2016 describing medical treatment that you had received while on active duty. As you approached the end of your active obligated service, you were evaluated several times by physicians in connection with your pre-separation physical. You provided medical records reflecting that in connection with your pre-separation physical, it was noted that you were not qualified for separation. You ultimately received a pre-separation physical on 2 May 2016, and a medical provider noted that you had ongoing mental health issues that should be transferred to the U.S. Department of Veterans' Affairs (VA). On 28 May 2016, you were discharged from active duty due to completion of your required service. On your discharge, you were issued an RE-R1 reentry code, which meant that you were eligible for "preferred reenlistment" and that you were qualified and fit to reenlist in the Navy immediately. Despite being issued a preferred reenlistment reentry code, you did not reenlist in the Navy.

In your petition, you request that your type of separation be changed to permanent retirement, your separation program designator be changed to "SFJ," your reentry code be changed to RE-3P, and your narrative reason for separation to "Disability Retirement." In support of your request, you contend that the psychiatrist for the Military Treatment Facility assigned to your command violated federal law when he failed to refer you to the Disability Evaluation System. You assert that, after you informed the psychiatrist of your head injury disqualification factors and provided him a list of injuries, the psychiatrist told you that you would qualify for a medical retirement, but that you should pursue treatment with the VA after you were discharged from the Navy. You further assert that within one year of your discharge, you were awarded 100% permanent and total disability for post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), among other disabilities, which was considered effective the day after your discharge from the Navy. You explain that, post-service, you have held no full-time job and that you are currently attending in-patient mental health treatment.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, 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. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements

on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. As an initial matter, in its application of the Clarifying Guidance, the Board acknowledged that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of argument, occurred, or was worsened, during your naval service. Next, the Board analyzed whether your condition mitigated your discharge with respect to the award of a service disability retirement. On this point, the Board determined that the record demonstrates that, notwithstanding your condition, despite your regular contacts with medical providers, no medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the Disability Evaluation System. In addition, there is no indication that any leader in your chain of command prepared any non-medical assessment describing your inability to perform the duties of your rate. To the contrary, as described above, in the reporting periods prior to your separation, you were awarded a Navy Achievement Medal and you were advanced to Chief Petty Officer, both of these accomplishments represent that you were considered to be highly qualified and effective in your rate. These accomplishments decidedly indicate that you were fit for duty under the meaning of the Disability Evaluation System. Indeed, these accomplishments, coupled with the fact that you were designated with a preferred reentry code, meant that you were fully capable of reenlisting and remaining on active duty in the Navy.

In addition, even assuming, arguendo, that you had diagnoses for PTSD or TBI, or both, while you were on active duty, it would not necessarily result in the award of a service disability retirement. Service members routinely remain on active duty with diagnoses of PTSD or TBI without those conditions considered unfitting. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have conditions that have been medically-determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was the expiration of your active obligated service. As noted, you were eligible for reenlistment and you chose not to reenlist. Finally, the Board did not find your post-service award of service connected disabilities by the VA to be persuasive, because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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.

In sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, the Board did not observe any error or injustice in your naval records. 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,

2/26/2024

[redacted]