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

[redacted]
Docket No. 7445-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 January 2023. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 and your response to the AO.

You initially enlisted in the Army on 2 January 2018. However, you were discharged with an uncharacterized discharge less than one month later, on 29 January 2018, for failing the Army's medical/physical procurement standards. According to your Electronic Medical Record, you were hospitalized in January 2018 after cutting yourself superficially to prove to the Army you needed to be discharged.

You subsequently enlisted in the Navy and entered active duty on 11 March 2020. Your enlistment physical examination, on 12 July 2019, noted multiple disqualifying defects including

an adjustment disorder with depressed mood, suicidal behavior, and molluscum contagiousum. Your self-reported medical history noted being seen by a doctor in May 2021 to obtain a current psychological evaluation in order to enlist in the Navy given your Army RE-3 reentry code. Your Navy examining physician noted the following: "Applicant stated he was not prepared mentally at that time due to homelessness but states now he is prepared mentally and physically to enlist." You received a waiver of physical standards from Navy Recruiting Command in order to enlist.

On your third day of active duty service, you were evaluated by a Navy Medical Officer (NMO). The NMO diagnosed you with and adjustment disorder, unspecified, and recommended your administrative separation for a condition not amounting to a disability. The NMO noted that your condition was sufficiently severe to significantly impair your ability to function effectively in the military environment. The NMO noted you had a previous history of mental health symptoms, diagnosis, and treatment. The NMO determined you were mentally responsible for your behavior and possessed significant capacity to understand and cooperate intelligently. The NMO noted that your disorder was not considered amenable to effective treatment in a military setting.

On 1 April 2020, your command provided you notice that you were being processed for an administrative discharge from the Navy by reason of convenience of the government as evidenced by a medical condition not amounting to a disability. 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 10 April 2020, you were discharged from the Navy with an uncharacterized entry-level separation (ELS) and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization, narrative reason for separation, and reentry code based on your factual situation.

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 for a different reentry code and contentions that: (a) an RE-4 is unjust for a single case of adjustment disorder with no prior mental health issues and it should be an RE-3G, (b) when you joined the Navy in 2020 you were currently homeless and was not in the best frame of mind when you shipped to initial recruit training ("boot camp"), (c) when you arrived you quickly realized that you made a mistake because you were not as physically fit as you should have been and not in the best frame of mind, and (d) you did not even know what an adjustment disorder was because you never had any previous issues with adjusting before boot camp. For purposes of clemency and equity consideration, the Board the considered the evidence you provided in support of your application.

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 6 January 2023. The Ph.D. stated in pertinent part:

> During military service, the Petitioner was properly evaluated and diagnosed with an Adjustment disorder. Although the Petitioner has received a mental health evaluation indicating he does not experience mental health symptoms currently, the stressors of military service are different from those of civilian life. An adjustment disorder diagnosis indicates that the Petitioner was experiencing difficulty in service, and typically resolves after separation from service. There is no evidence that his in-service diagnosis was in error. Given the Petitioner's extensive mental health history which predates his previous service attempts, there is no evidence that would indicate a return to service would result in a different outcome.

The Ph.D. concluded, "it is my considered clinical opinion there is in-service evidence of a mental health condition experienced during military service. There is insufficient evidence of error in diagnosis."

In response to the AO, you submitted a psychological evaluation report from June 2022. The report determined that you did not meet the criteria for Autism Spectrum Disorder.

After thorough 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 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 NMO clearly formed his mental health diagnosis based, in part, on information personally provided by you during your evaluation, and your previous extensive mental health history. The Board concluded that the objective evidence established you were appropriately diagnosed with an adjustment disorder on active duty, and that your reenlistment code was appropriate for the circumstances underlying your separation. The Board noted that by definition an adjustment disorder typically resolves once you remove the stressor(s) underlying the adjustment disorder. However, the Board concluded there was absolutely no evidence in the record to indicate your return to active duty service would result in a different outcome from your previous Army and Navy enlistments.

The Board 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 noted that the NMO stated in no uncertain terms that your condition was sufficiently severe to significantly impair your ability to effectively serve 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 assigning you an RE-4 reentry code in lieu of an RE-3G reentry code.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a reentry code to be automatically upgraded after a specified number

of months or years. The Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case. Moreover, absent a material error or injustice, the Board declined to summarily make changes to your service record solely for the purpose of facilitating veterans' benefits, or enhancing educational, enlistment, or employment opportunities, including military enlistments. As a result, the Board determined that there was no impropriety or inequity in your reentry code, and the Board concluded that you received the correct reentry code based on your overall circumstances, and that such reentry code was proper and in accordance with all DoN directives and policy at the time of your discharge. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

2/2/2023

[redacted]