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

[redacted]
Docket No. 8002-22
Ref: Signature Date

[redacted]

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 Board waived the statute of limitation 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 10 March 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 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Navy and began a period of active duty on 2 January 1990. That same month, you were administratively counseled regarding waiver of your pre-service drug use. On 24 May 1990, you were administratively counseled, in advance of your first nonjudicial punishment (NJP), regarding retention with warnings that further misconduct could result in administrative separation. Subsequently, you received NJP for two specifications of violations of Article 86 due to brief unauthorized absences (UA) from your appointed place of duty. You did not correct your disciplinary deficiencies and received a second NJP on 29 June 1990 for an additional period of UA from your appointed place of duty as well as a violation of Article 134 due to incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor. You again absented yourself the following year, for a period in excess of 72 hours, from

22 – 26 August 1991, after which you referred yourself for a medical evaluation of alcohol abuse. This evaluation resulted in a recommendation of level II outpatient rehabilitation treatment unless there was an available level III residential treatment option. You committed yet another UA period from 1 – 2 December 1991 and received a third NJP for another violation of Article 86.

On 15 March 1992, you were administratively counseled for having been identified as an alcohol abuser with a requirement to attend level I rehabilitation courses and Alcoholics Anonymous meetings until you were able to attend your scheduled level II program. Meanwhile, you received a fourth NJP for two additional specifications of Article 86 violations due to being late reporting for duty. You committed an extended period of UA from 1 – 9 June 1992 for which you then received your fifth NJP for your repeated Article 86 violations as well as another Article 134 violation for being incapacitated for duty. Your sixth NJP resulted from further Article 86 violations due to missing 21 restriction musters, for again being incapacitated for duty under Article 134, and for an additional violation of Article 91 due to being disrespectful in deportment and language to a noncommissioned officer.

As a result, you were notified of administrative board procedures for misconduct due to commission of a serious offense, pattern of misconduct, civilian conviction on charges of driving under the influence (DUI), and also for the reason of alcohol rehabilitation failure of your level II treatment program. Your recommended separation was under Other Than Honorable conditions; however, you elected to waive all applicable rights. On 3 August 1992, received a civilian conviction for DUI. Your separation was approved for commission of a serious offense, and you were discharged, on 23 October 1992, with a final trait average of 3.8 notwithstanding your misconduct.

You initially applied to the Naval Discharge Review Board (NDRB) without introducing any decisional issues and submitted evidence of post-discharge character, which was considered and denied on 13 July 2000.

Your first application to the Board, Docket No. 3152-14 was denied on 22 October 2014 for being untimely, as the statute of limitation was not excused. However, your application for reconsideration was reviewed in Docket No. 9182-15, wherein you contended that your post-service character merited consideration of a grant of relief based upon clemency. You also claimed entitlement to additional awards and contended, in part, that you signed the waiver of your administrative separation out of fear; you also contended that the Navy had been reluctant in diagnosing your alcohol addiction and negligent in assisting in your rehabilitation treatment. Your request for reconsideration was eventually denied on 13 October 2016. A subsequent request for reconsideration was denied on 23 April 2020 in Docket No. 1981-19, wherein you contended that it was an error [abuse] of discretion that your command had repeatedly punished your alcohol dependency rather than treating you. You expressed a belief that your punishments exacerbated your alcohol abuse whereas your contended post-service sobriety reflects that you would have overcome your alcohol-related misconduct issues and served honorably if you had received appropriate and timely treatment. You also resubmitted your evidence of post-discharge character for consideration and contended that a mental health condition contributed to your discharge.

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 for an "Honorable" discharge with a change to your narrative reason for separation as well as your contentions that the conditions of fibromyalgia and chronic multi-symptom illness (CMI) exacerbate your post-traumatic stress disorder. You further assert that your previous denial was premised upon the assessment of the AO that "additional information such as medical records containing a diagnosis of a mental health condition associated with [your] military service and linked to [your] misconduct" would be required for an alternate, favorable opinion. In this regard, you state that you have provided "exactly" what the Board indicated was necessary and, therefore, demand an alternate opinion.

Because you contend that PTSD affected your discharge, the Board also considered the AO provided on 3 February 2023. The AO stated in pertinent part:

> The Petitioner submitted VA Disability Questionnaire (DBQ) evaluations which indicate diagnoses of PTSD, Fibromyalgia and Specific Phobia. Additionally, he submitted character references and post-service accomplishments. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than Alcohol Abuse/Dependence. He has provided no medical evidence in regards to PTSD or Specific Phobia aside from VA Disability Questionnaires. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO 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 that his misconduct could be attributed to a mental health condition."

In reviewing your evidence, the Board also noted specific examples within the medical records you submitted include provider remarks such as "Veteran *now* has clear symptoms of PTSD," without confirming an in-service onset of symptoms, and "Per vet his chronic fatigue began noticeably in about 1998-1999." The Board observed that this documented onset was considerably after your discharge in 1992, although you self-reported a generalized belief that symptoms were "probably coming on gradually prior to that time." Moreover, with respect to your diagnoses, your provider described that your "Current symptoms are related to multiple [current] psychosocial factors including job stress/concerns, financial concerns, and concerns about the future," notwithstanding that your current diagnoses have been curiously identified as "less likely than not related to a[n unspecified] specific exposure event" you purportedly experienced during service in Southwest Asia." Regarding this assessment and your self-report of unstipulated symptoms of irritability beginning during your military service, and after your return from the Gulf War, the Board observed that your service during that period was in the field of air traffic control and that you have not described any particular exposure event which might have rationally occurred given your occupational field and documented duty assignments.

Further, as noted by your provider, all of your misconduct was alcohol related, and you self-reported misuse of alcohol beginning as early as age 16, prior to your military service.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, upon consideration of all available information, the Board concurred with the AO in regard to the lack of evidence of nexus regarding your experience of behaviors or symptoms, during your military service, attributable to your post-discharge mental health diagnoses. With respect to your evidence of post-service character, the Board noted that the information you submitted and that you did not appear to have submitted anything new for consideration from the past 4 years since you previously applied to the Board. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 is attached 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,

4/1/2023

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Executive Director

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