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

[redacted]
Docket No. 8138-22
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 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 27 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 6 February 2023. Although you were provided an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 21 July 1981. On 4 January 1984, you were found guilty at a summary court-martial (SCM) of wrongfully using marijuana, and sentenced to forfeit $400.00 pay per month for one month, to be reduced in rank to E-1, and to confinement at hard labor for 30 days. Subsequently, on 18 September 1984, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. On 1 October 1984, you were notified of your pending administrative separation by reason of drug abuse. On 2 October 1984, your commanding officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of discharge by reason of drug abuse. On 9 October 1984, a staff judge advocate's review of your case found the

proceedings were sufficient in law and fact. On 23 October 1984, the separation authority directed you be discharged with an OTH by reason of drug abuse. On 26 October 1984, you were so discharged.

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 upgrade your discharge characterization of service and your contentions that you incurred mental health concerns (MHC) during military service. You assert that: (1) you incurred PTSD after you discovered the murdered bodies of a female Marine and her sister by another Marine, (2) although never suspected or investigated as being involved in the aforementioned murders, the mood amongst your fellow Marines and leaders changed and you were "under constant pressure to prove yourself," and (3) this led to your error in judgment when you shared a marijuana cigarette that was being passed around a group of Marines at a bar prior to a scheduled urinalysis test. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters that described post-service accomplishments.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

> The Petitioner submitted a character reference from the Commanding Officer of his local VFW Post, and one page from [redacted] Services indicating a diagnosis of PTSD in April 2022. 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. The page from [redacted] indicating a diagnosis of PTSD is temporally remote to service and does not contain any information about the etiology of his diagnosis. 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 diagnosis, 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."

After a thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Furthermore, the Board noted that marijuana use in any form is still against the Department of Defense regulations and not permitted for recreational use

while serving in the military. Additionally, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command and found that your misconduct was intentional, and made you unsuitable for continued service. Lastly, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. 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,

4/4/2023

[redacted]