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

[redacted]
Docket No. 8682-22
8012-21
9611-16
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 limitations 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 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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 United States Navy and commenced a period of service on 29 July 2009. On 11 August 2009, you self-referred and were evaluated at the [redacted]

[redacted]. During your assessment, you claimed to be "severely depressed" after learning that your wife was hospitalization due to her diabetic condition. You also stated that you could not deal with the stresses of boot camp, and that you were having "violent thoughts," to include assaulting other recruits because of their disrespect. You indicated that you were having thoughts of self-harm, including "jumping out of a window," not with the intention to die but rather to injure yourself in an effort to get sent home. The treating psychologist diagnosed you with an adjustment disorder with mixed anxiety and depressed mood and recommended that you be administratively separated from the Navy due to a disqualifying psychiatric condition.

On 17 August 2009, you were notified that you were being processed for an administrative discharge by reason of "Convenience of the Government – Condition (not a Disability)." You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. You were also formally counseled and acknowledged that you had been afforded all reasonable psychiatric assistance, but due to the inability to correct your condition within a reasonable time period, you are being processed for separation.

On 19 August 2009, the separation authority directed your separation from the Navy for the convenience of the government due to a physical or mental condition (not a disability) and, as you only served 27 days on active duty, you received an uncharacterized (entry level separation) discharge. Pursuant to the directive of the separation authority, you were assigned a "RE-4" reenlistment code.

You previously applied to this Board for a change to your reenlistment code and were denied relief on 13 November 2017 and 21 January 2022.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to change your reenlistment code, (b) your age and maturity level at the time of your service, (c) your contention that you were never struggling with a mental health condition and instead "exaggerated" and/or falsely claimed symptoms which resulted in an inaccurate diagnosis, and (d) your post-service psychiatric evaluations that state you do not meet the diagnostic criteria for any mental illness. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your mental health examinations, post-service accomplishments, and character letters.

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 9 December 2022. The Ph.D. noted in pertinent part:

> The Petitioner submitted post-service psychiatric evaluations whereby he has been found to have no current psychiatric diagnosis. The Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His 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 a mental health condition as documented in his service record. The stressors in service are considerably different than stressors experienced in the civilian sector. The severity of the Petitioner's statements during the psychiatric evaluation warranted the diagnosis given, as well as separation both for the safety of the Petitioner and his fellow sailors. It is impossible to state that the Petitioner's mental health issues would not resume if given the opportunity to reenlist.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of an error in diagnosis or reenlistment code."

In your response dated 6 January 2023, through counsel, you argue that the AO failed to directly address or refute the crux of your position. Specifically, you argue that "the provider may have come to a reasonable conclusion based on the information available at the time, but if the underlying information or conveyed symptoms are ***false*** or deliberately misleading, then the end result would be an incorrect diagnosis." You state that you "exaggerated symptoms and expressed thoughts and feelings which [you] did not actually think and feel. You state that you did not actually experience these thoughts and that you "knew exactly what words to say to get out" of the military. You highlight that in all three post-service psychiatric evaluations, you did not meet the criteria for any mental illness. In the alternative, you argue that even if you had suffered from an adjustment disorder, your condition was temporary, tied to specific stressors, and that you have fully recovered without any post-service manifestation of a mental health condition.

After thorough review, the Board concluded the 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 the stressful events occurring your life and their impact on your conduct. The Board considered both of your arguments in turn. If you were accurately relaying your mental health symptoms at the time of your psychological evaluation with the [redacted], the Board concurred with the advisory opinion that based on that information, you were correctly diagnosed with an Adjustment Disorder. Although you claim that such disorder is temporary in nature and that the triggering stressors are no longer at play, the stressors in service are considerably different than stressors experienced in the civilian sector. Therefore, it is impossible to state that your mental health issues would not resume if you were given the opportunity to reenlist. The military lifestyle frequently results in family separation, often during pivotal life events, and the military cannot afford to separate service members every time such stressors present themselves. The Board did not believe it prudent to exercise its equitable relief authority to potentially enable your return to the same environment to which you were not previously able to adjust.

The Board also considered your assertion that the initial diagnosis was wrong because you did not actually suffer from mental health symptoms, and were instead "exaggerating" and relaying "false" symptoms that you were not actually experiencing. You admit that you "lied" and "knew exactly what words to say to get out" because "that's what my former wife wanted me to do." The Board was troubled by this assertion, as it called into question your integrity and truthfulness. The Board felt that your knowing and willful manipulation of information

contained in official military records was tantamount to misconduct and was not in line with Navy core values. The Board acknowledged that you may have lacked maturity at the time of your discharge, but your decision to make false official statements in an effort to terminate your military obligation raised significant doubts regarding your character which offset, the other factors which may have weighed in favor of relief. Therefore, under either argument, the Board determined your RE-4 reentry code is appropriate and supported by the evidence.

While the Board commends your post-discharge accomplishments and good character, 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 overturn a decision the Board deemed appropriate. 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

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