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

[redacted]
Docket No. 0363-23
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 22 May 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. Although you were afforded the opportunity to provide a response to the AO, you chose not to do so.

You enlisted in the United States Navy and commenced a period of service on 30 December 1986. On your enlistment application, you acknowledged pre-service experimental marijuana use and three pre-service arrests for possession of alcohol and underage drinking. During your pre-enlistment physical, you acknowledged a motor vehicle accident (MVA) in June 1985, which required "operation to face and jaw…no pins," and reported that your "condition [was] resolved." The civilian physician expressed the opinion that you were "neurologically normal and there is no reason why [you] should not be accepted into the military."

On 22 June 1987, you were dropped from your training course due to lack of motivation. In August 1987, you received a mental health evaluation, which noted there was "no evidence of diminished cognitive… [results] suggested probable character pathology manifested by a cyclic pattern of recurrent acting out followed by situational stress and remorse." On 12 December 1987, you received emergency medical treatment for "trauma to left eye and right forehead…due to fight without loss of consciousness (LOC)." It was noted that the incident was possibly alcohol related.

On 8 February 1988, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA). You did not appeal this NJP. You were formally counseled and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action or processing for administrative discharge.

On 17 February 1988, an alcohol screening was conducted due to multiple alcohol related events including, a Driving Under the Influence (DUI) conviction at age 19 and two periods of UA. The counselor assessed you as having an immature personality with a history of alcohol abuse and referred you to Level II alcohol treatment.

On 19 April 1988, you received your second NJP for violating UCMJ Article 92, for disobeying a lawful order, Article 107, for making a false official statement with intent to deceive, and Article 134, for wrongfully possessing another's military ID card. On 26 April 1988, you received your third NJP for violating UCMJ Article 86, for failure to go to your appointed place of duty, to wit: restricted men's muster on four occasions. You did not appeal these NJPs.

On 28 August 1988, you were notified that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 29 April 1988, you received your separation physical and denied mental health symptoms.

Prior to your separation, on 12 May 1988, you received medical treatment at Naval Hospital [redacted] following a MVA. You reported having consumed 8 beers and smoked marijuana, stating that you "think [you] fell asleep, crashed [your] car into a telephone pole." You were found face down, a half of a mile from your car. You reported that you were an alcoholic. On 24 May 1988, you were discharged from the Navy for pattern of misconduct, with an OTH characterization of service, and assigned an RE- 4 reenlistment code.

Your case was previously reviewed by the Navy Discharge Review Board (NDRB), and you were denied relief on 5 May 1992. NDRB determined that no change was warranted and that your discharge was proper.

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 upgrade your characterization of service, change your narrative reason for separation, and restore your rank, (b) your contention that you were struggling with undiagnosed PTSD and other mental health concerns due to an aggravated TBI, (c) the impact that your mental health had on your conduct

during service. For purposes of clemency consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which aggravated a pre-service Traumatic Brain Injury (TBI), and might have mitigated the circumstances of your discharge. In support of your request for relief, you provided a February 2023 letter from your civilian physician who has been reportedly "seeing [you] for the past couple of years with a diagnosis of psychosis," and described "a serious MVA with head injuries prior to [your] service in 1985…[and you] may have been suffering with symptoms of [your] injuries prior to [your] service which contributed to [your] difficulties." You also submitted a December 2022 letter from your civilian physician listing a diagnosis of paranoid schizophrenia.

As part of the Board review process, the BCNR [redacted], a licensed clinical psychologist (Ph.D.) and a Physician Advisor/Psychiatrist (M.D.), reviewed your contentions and the available records, and issued an AO dated 10 April 2023. The advisors noted in pertinent part:

> Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use and personality disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinicians, and the psychological evaluation performed. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. A personality disorder indicates lifelong traits and by definition is pre-existing to military service. Post-service, the Petitioner has received treatment for other mental health conditions that are temporally remote to military service and appear unrelated. Although a post-service civilian provider has expressed the opinion the Petitioner's in-service behavior may be better accounted for by TBI, available data from the Petitioner's military service indicates his misconduct is better attributed to problematic characterological traits and alcohol use, particularly given pre-service behavior that appears to have continued during service. It is difficult to attribute false official statements and use of another's identification to TBI. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. and M.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI, PTSD, or another mental health condition other than his in-service diagnosed alcohol use and personality disorders."

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 mental health and the possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs, outweighed

these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a MVA involving both alcohol and drugs immediately while you were pending separation from the service. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that substance abuse is contrary to the Navy's core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your substance use and personality disorder diagnoses were based on observed behaviors, the information you chose to disclose, and the psychological evaluation performed. Substance abuse is incompatible with military readiness and the Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. A personality disorder is pre-existing to military service by definition and consistent with your pre-service misconduct which appears to have continued while in service. The Board agreed with the AO that it was difficult to attribute some of your misconduct, such as false official statements and use of another's identification card, to symptoms associated with TBI. You did not raise any such issued during your discharge process, and waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. The Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. Therefore, the Board found no basis to grant your request to restore your rank to E-3 or to change your narrative reason for separation. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record liberally and 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 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,

5/30/2023

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