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

[redacted]
Docket No. 1091-23
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 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 22 September 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 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 an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

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 U.S. Navy and began a period of active duty service on 5 September 1989. Your pre-enlistment physical examination, on 18 March 1989, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, or treatment/counselling history. On 2 January 1990, you reported for duty on board the [redacted] in [redacted], [redacted].

On 4 October 1990, you were convicted at a Special Court-Martial (SPCM) of assault consummated by a battery and unlawful entry. You were sentenced to confinement for sixty (60) days and forfeitures of pay. On 27 November 1990, the Convening Authority approved the SPCM sentence as adjudged.

On 28 January 1991, you were convicted at a second SPCM of three separate specifications of insubordinate conduct. You were sentenced to confinement for seventy-five (75) days and forfeitures of pay. On 26 February 1991, the Convening Authority approved the SPCM sentence as adjudged, except suspended any confinement in excess of seventy (70) days.

On 28 February 1991, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP.

On 6 March 1991, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. You waived your rights to consult with counsel, to submit statements on your own behalf, and to request a hearing before an administrative separation board. You also did not expressly object to your separation. On 20 March 1991, the Separation Authority approved and directed your separation from the Navy for misconduct due to the commission of a serious offense with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 29 March 1991, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

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 discharge upgrade and change to your narrative reason for separation. You contend that: (a) you are a schizophrenic and first began to experience schizophrenic symptoms while on active duty in [redacted], [redacted], (b) you connected the onset of your symptoms to an attack you experienced on active duty where you suffered a serious head injury requiring treatment at [redacted], (c) during the course of your head injury treatment you suspect that Navy medical personnel implanted a computer chip in your head, (d) you attribute you schizophrenic symptoms to the implanted chip, (e) following the injury you began to hear voices and were getting in trouble in the Navy, (f) post-service your auditory hallucinations increased, and you began experiencing visual hallucinations, (g) for over two decades you self-medicated with alcohol in an attempt to cope with the profound symptoms of your then undiagnosed schizophrenia, (h) post-service the Department of Veterans Affairs diagnosed you with schizophrenia, and following your treatment you continued to self-medicate with alcohol, and you got into trouble with police for trespassing, assault, battery, and alcohol-related misconduct, (i) after more than two decades of self-

medication and struggling on your own with your condition you began receiving regular psychiatric treatment and medication, and were again diagnosed with schizophrenia, and (j) since you began receiving treatment in 2003, you have not been in trouble with the police. For purposes of clemency and equity consideration, the Board considered the entirety of 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 16 August 2023. The Ph.D. stated in pertinent part:

> 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. He has provided post-service evidence of diagnoses of Schizophrenia, Antisocial Personality Disorder and Drug-Induced Mental Disorder that are temporally remote to service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records containing the events (TBI and subsequent psychotic symptoms) described by the Petitioner, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. 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 thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, 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 concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to either a traumatic brain injury or any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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 did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board

determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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,

9/27/2023

[redacted]