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

[redacted]
Docket No. 4316-23
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 reconsideration application on 3 November 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 professional. 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 17 September 1982. Your pre-enlistment physical examination, on 14 September 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 14 June 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA) lasting one (1) day. You did not appeal your NJP. On 26 October 1985, you commenced a period of UA that terminated after eight (8) days on 3 November 1985. On 20 November 1985, you received NJP for your 8-day UA. You did not appeal your NJP.

On 15 January 1986, you commenced a period of UA that terminated after two (2) days with your surrender on 17 January 1986. On 3 February 1986, you commenced a period of UA that terminated after seventy-five (75) days with your surrender on 19 April 1986. On 28 April 1986, you commenced a period of UA that terminated after 158 days with your surrender on 3 October 1986. On 4 October 1986, you commenced a period of UA that terminated after 174 days with your arrest by civilian authorities on [redacted] on 27 March 1987.

On 4 June 1987, you were convicted at a Special Court-Martial (SPCM) of four (4) UA specifications totaling 407 days. You were sentenced to confinement for seventy-five (75) days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 30 October 1987, the Convening Authority approved your SPCM sentence. Upon the completion of appellate review in your case, on 17 May 1988, you were discharged from the Navy with a BCD 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and a Secretarial Authority discharge. You contend that: (a) at the time of your misconduct you were suffering from behavioral health conditions, (b) such conditions qualify you for consideration and relief pursuant to the Hagel, Kurta, and Wilkie memoranda, (c) you have been diagnosed with alcoholism, drug addiction, ADHD, and severe anxiety, all of which were directly connected to your PTSD, (d) exemplary post-service conduct, (e) for the first three years of your life in the Navy you were a good sailor and when your disease took over you were no good to anyone, not even yourself, and (f) if you are supposed to forgive the Navy for possibly putting you in a situation in boiler rooms with asbestos then you would presume that the Board would perhaps forgive you for being very young and suffering from alcoholism. 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 27 September 2023. As part of the Board's review, the Board considered the AO. The Ph.D. stated in pertinent part:

> There is no evidence the Petitioner 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation.
>
> A civilian therapist has suggested the Petitioner may have a diagnosis of PTSD and other mental health conditions that are temporally remote to military service. Unfortunately, the therapist has not provided sufficient information regarding symptom onset and severity to clarify the presence of a formal diagnosis, or attribute any purported diagnosis to military service. Additionally, there are problematic discrepancies between the Petitioner's report to his mental health clinician and the information in his service record, which raise concerns regarding the reliability of the report received by the mental health provider.
>
> Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. Although UA can be an indicator of PTSD avoidance, it is difficult to attribute the Petitioner's repeated, extended UA to a mental health condition. There is insufficient evidence to attribute his alcohol use disorder to military service, given pre-service problematic alcohol behavior that continued in service, according to the record and the Petitioner's statement.

The Ph.D. concluded, "it is my clinical opinion there is some post-service evidence from a civilian mental health therapist of diagnoses of PTSD and other mental health conditions. There is insufficient evidence to attribute his mental health diagnoses to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the SPCM misconduct that formed the basis of your discharge. The Board observed that your available active duty records did not contain evidence of a mental health diagnosis. The Board noted that although you have a post-service PTSD diagnosis, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. 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 cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and

demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate 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 with a BCD 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain veterans' status or benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. The simple fact remains is that you left the Navy while you were still contractually obligated to serve on four separate occasions and you went into a UA status without any legal justification or excuse totaling a staggering 407 days. 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,

11/8/2023

[redacted]