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

[redacted]
Docket No. 6059-23
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 Board waived the statute of limitation 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 26 January 2024. 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps Reserve under a reserve option contract and began your initial period of active duty training on 7 May 1984. You were honorably discharged into the Reserve, on 6 October 1984, in a drilling status, which you appear to have complied with for over one year until, in November 1985, you began missing required drills. You were administratively counseled, in December 1985, regarding your non-recommendation for promotion due to unsatisfactory participation in drills and, in January 1986, regarding your administrative reduction due to continued unsatisfactory performance.

On 9 February 1986, you were issued notification of administrative separation proceedings for the basis of unsatisfactory participation in reserve training due to your failure to maintain satisfactory drill status after at least 13 unresolved drill periods. You elected to waive your right to a hearing before an administrative separation board. The recommendation for your discharge under Other Than Honorable (OTH) conditions documented that, after initially receiving a report from your gunnery sergeant that you had stated you "quit and would not attend more drills" your officer-in-charge felt this report might be spurious and, therefore, had his first sergeant contact you. However, this letter documents that you elaborated on the reason for your absences as follows: "[he] stated in December that he 'quit' and would not attend any more drills … that he felt reserve duty was demeaning to someone with a college education and that he did not care about the consequences." Your OTH separation was approved with a reentry code of RE-3C, on 22 April 1986, and you were discharged from the Marine Corps Reserve.

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 and your contentions that you suffered from mental trauma experienced during boot camp while standing fire watch after another recruit successfully attempted suicide by overdose. You describe that he was struggling to breathe, with foam coming out of his mouth, and that you assisted in helping with the recruit while your drill sergeant called an ambulance, but the recruit became unresponsive and later died. You believe that this incident, in addition to unspecified trauma you experienced during infantry school, resulted in your adjustment disorder and post-traumatic stress disorder (PTSD) diagnoses, as well as symptoms of insomnia, and thus contributed to your unsatisfactory drilling performance while in the Marine Corps Reserve. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, a civilian medical opinion regarding your medical diagnoses, Department of Veterans Affairs (VA) records of your diagnoses and your PTSD Disability Benefits Questionnaire, as well as evidence of post-discharge character for consideration of clemency by way of a recognition certificate of your 10 years of service, in an unspecified capacity, with the VA from 2007 through 2017.

Because you contend that PTSD or another mental health (MH) condition affected your ability to successfully drill and, therefore, the circumstances of your discharge, the Board also considered the AO. In relevant part, the AO provided the following assessment of available, factual evidence documented in your service records weighed against the post-service medical information you provided:

> While in the reserves, he claimed that his failure to participate in drill was due to his perception that his tasks were demeaning. Temporally remote to his military service, he has received diagnosis of mental health conditions that are attributed to events during his initial training. With the passage of time, the Petitioner has considered that his failure to drill was due to unrecognized mental health symptoms. However, there is no evidence that his reasons for failure to drill provided during his service are not correct.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to this AO, you submitted a statement reiterating the medical opinion you had already provided and informing the Board that, if you are unsuccessful in your current application, your "next attempt will be hiring a Military Attorney." The AO remained unchanged after a review of your rebuttal evidence.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your missed drills and refusal to continue your military obligations, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO regarding the lack of nexus between your unsatisfactory drills and your purported traumatic experience. While the Board noted that your post-discharge diagnosis of PTSD has been attributed to your active military service during boot camp, the Board found the letter from your officer-in-charge recommending your administrative discharge to be both highly detailed and credible. This official record clearly documents your stated reason for your missed drills – specifically, that they were demeaning to a college educated person.

Further, as also noted within that letter, your officer-in-charge took additional steps to double check whether you had, in fact, "quit" drilling and to confirm your reasoning for doing so, which he did because of your "previous good record" of more than a year of reserve service without missing drills prior to your decision to "quit." Although, nearly 40 years later and after having been employed by the VA for over a decade, you now attribute your missed drills to a traumatic experience during recruit training, the Board found insufficient evidence to doubt the veracity of the reason you provided for those missed drills contemporaneously to your administrative separation processing. 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 and commends you for your post-discharge accomplishments, 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 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,

2/26/2024

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