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

[redacted]
Docket No. 6797-23
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 14 February 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 4 November 2002. On 22 January 2004, you received non-judicial punishment for false official statement. On 2 December 2004, you were issued an administrative remarks (Page 11) counseling warning documenting your deficiency in conduct as you were reported for committing an assault at your residence. The Page 11 expressly warned you that failure to take corrective action may result in adverse administrative action, disciplinary action, and/or limitation of further service. You participated in Operations in Iraqi Freedom from 11 February 2005 to 12 August 2005.

On 12 January 2006, [redacted] reported that your urine sample tested positive for cocaine and THC (marijuana). On 6 February 2006, you were issued a Page 11 counseling concerning your Violation of Article 112a by willingly and knowingly using a controlled substance, to wit: marijuana and cocaine. On 24 March 2006, you were evaluated and diagnosed with adjustment disorder and recommended for substance use treatment. Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an other than honorable characterization of service. The separation authority approved the recommendation for administrative discharge and directed your other than honorable discharge from the Marine Corps by reason of misconduct due to drug abuse. On 18 May 2006, you were so discharged.

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 character of service and contentions that at the time of your discharge you were dealing with a mental/psychological condition and struggled with insomnia, you struggled to make rational decisions, and you needed treatment. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 19 January 2024. The AO noted in pertinent part:

> Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His adjustment disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct. While his substance use could be considered a behavioral indicator of PTSD symptoms, much of his misconduct preceded his combat deployment. Although it is possible that the adjustment symptoms may have been conceptualized as PTSD with the passage of time and increased understanding, there is no medical evidence of a diagnosis of PTSD. 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 AO concluded, "it is my clinical opinion there is in-service evidence of a diagnosis of a mental health condition (adjustment disorder) that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your non-judicial punishment and wrongful use of a controlled substance, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board concurred with the AO that while there is in-service evidence of a diagnosis of a mental health condition (adjustment disorder) that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD, and there is insufficient evidence to attribute all of your misconduct to a mental health condition. As the AO explained, the available records are not sufficiently detailed to establish a nexus with all of your misconduct. Although it is possible that the adjustment symptoms may have been conceptualized as PTSD with the passage of time and with increased understanding, there is no medical evidence of a diagnosis of PTSD. Therefore, 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. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an other than honorable characterization. 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. 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,

3/1/2024

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