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

[redacted]
Docket No. 1221-23
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 18 April 2024. The names and votes of the members of the panel 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 Office of the Secretary of Defense concerning discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense concerning discharge upgrade requests by PTSD or TBI (Carson Memo) (collectively the Clarifying Guidance). The Board also considered a 6 March 2024 advisory opinion (AO) from a qualified medical professional and your response to the AO.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 10 March 2009. On 1 March 2018, you were reviewed by medical, and the report of the provider stated:

> 1. Post-traumatic stress disorder, unspecified F43.10: No SI/HI. Pt about to separate from military and fly to [redacted] on Monday for his new job. Pt reports feeling great on meds and would like a 90 day supply of both Zoloft and Trazadone. P's psychiatrist's currently on leave so pt reported to PCM for Meds. Refill placed.

On 29 March 2018, you completed your required service, which was considered Honorable, and you were assigned an RE-1A reentry code, which meant that you were fully eligible to reenlist in the Marine Corps. You have provided information that, after your separation on 17 September 2018, the Department of Veterans' Affairs awarded you a service connected disability for post-traumatic stress disorder (PTSD) with a 50% rating effective the day after your separation.

In your petition, you requested (1) to be placed on the permanent disability retired list (PDRL) effective 30 March 2018 at 70% and to have your Certificate of Release or Discharge from Active Duty (DD Form 214) reissued to reflect placement on PDRL, and (2) approval for combat related special compensation (CRSC). In support of your request, you contend that when you returned from active combat operations in support of Operation Inherent Resolve in August 2017, you were diagnosed with an adjustment disorder with mixed anxiety and depressed mood. You further state that you were thereafter diagnosed with post-traumatic stress disorder (PTSD) on 5 February 2018. You explained that you were cleared for separation during a separation exam, on 14 February 2018, while you were in regular mental health treatment for PTSD and you were on prescribed medication. You also argue that after your separation were granted service connection for PTSD as well as for a sleep disorder with an evaluation of 50 percent effective 30 March 2018 and that, as of 3 February 2023, you are still in treatment for PTSD.

In order to assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your request. According to the AO:

> Petitioner's in-service diagnosis of PTSD, Unspecified and successful treatment with supportive psychotherapy and psychotropic medications is documented in the available service medical record entries. Post-discharge evidence provided by the Petitioner documented VA Disability award for several conditions that arose during his military service, including PTSD (with Sleep Apnea).
>
> Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the full range of responsibilities of his rate and rank throughout his career at a level of superior sustained performance. He achieved academic success in attaining associate's and undergraduate degrees, and post-discharge had begun his master's degree.
>
> Available clinical records indicated his treating providers during his active military service consistently returned him to duty without limitations and did not see his condition as interfering with his military duties or indicative of referral to a MEB or PEB for fitness determination.
>
> During his transition towards the end of his active-duty career, he was hired as a contractor with Rolls Royce and successfully continued in that career through the March 2020 VA Mental Disability and Review PTSD Disability evaluation.
>
> After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner did not suffer from any medical or mental health conditions that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating. His

> medical status did not represent an obvious medical risk to the health of the member or to the health or safety of other members, nor did his medical status imposes unreasonable requirements on the military to maintain or protect the Service member.

The AO concluded, "in my medical opinion, the preponderance of objective evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been medically retired. Should any further evidence surface supporting unfitness or a disability retirement, resubmission would be appropriate."

You provided a response to the AO, which the Board carefully reviewed. According to your response, you were unfit for duty because of your diagnosis of adjustment disorder, history of alcohol dependence, and diagnosis of PTSD. You assert that your underlying diagnoses significantly interfered with your ability to perform the duties of his office, grade, rank, and rating. You also argued that the application of the relevant references and requirements demonstrates that you were clearly unfit for duty in your office, grade, rank, and rating as a Fixed-Wing Aircraft Crew Master KC-130 due to a current diagnosis of PTSD, alcohol dependence, and adjustment disorder at the time of his discharge. In addition, you argue that you were simply given a container of pills, discharged from active duty, and you are still receiving treatment from the VA.

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, 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. In reaching its decision, the Board observed that your assertion that you should have received a medical retirement would have required that you be processed through the Disability Evaluation System (DES) while you were on active duty. In order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES at the time of your separation. In its comprehensive review of the entirety of your request, the Board determined that, despite your diagnosis of PTSD while you were on active duty, there is no evidence that any medical provider considered such conditions to warrant referral to a medical board for a determination of fitness for duty within the DES. Service members routinely serve in the naval services with PTSD and other mental health diagnoses, and such a diagnosis does not necessarily result in a finding of an unfitting condition. In your case, the Board substantially concurred with the findings of the AO, observing that it carefully reviewed the evidence and reached a reasonable conclusion. In light of the finding of the AO, which the Board determined was supported by objective medical

evidence from your time in service, the Board determined that there was insufficient evidence of an unfitting condition while you were in service.

The Board further noted that there is no indication in your record, and you provided none, that you were found to be unfit to perform your duties within the meaning of the Disability Evaluation System. For example, there is no indication from any person in your chain of command that described any deficiencies based on your mental health conditions that you contend were unfitting. To the contrary, the Board observed that, for example, your final fitness report, for the period 8 August 2017 to 29 March 2018, reported that you were a highly regarded professional who was instrumental in developing a training program and that you had been hand-picked to attend an advanced training course. The fitness report does note that you had a brief period of limited duty when you "rolled your ankle" and had a period of recovery. This highlighted to the Board that, based on the presumption of regularity, if you had a potentially unfitting condition, your command would have monitored it and submitted a non-medical analysis (NMA) of your inability to perform your duties. However, in this fitness report, you were actually enthusiastically recommended for promotion. The Board noted that it did not base its decision solely on your fitness report, but it also based its decision on, as noted, the absence of any other indication that you were unfit during service, the well-reasoned AO, your separation medical examination that found you fit for separation, and the fact that you were assigned an RE-1A reentry code, signifying that you were actually able to reenlist in the Marine Corps, which is inconsistent with being unfit to serve in the Marine Corps.

In addition, in your petition as well as your rebuttal cite to your rating decisions provided by the VA, but the VA does not make findings concerning fitness for duty. To the extent you rely upon findings by the VA to support your request for a disability retirement, the Board reiterated that the VA is a separate organization, and it does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. In sum, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Finally, the Board did not consider your request for CRSC benefits based on their finding that you are not statutorily eligible for CRSC, since you are not a retired from the Marine Corps, and the fact you have not yet exhausted your administrative remedies by filing an application with the CRSC Board. Therefore, the Board took no action on your request.

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,

5/13/2024

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