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

[redacted]
Docket No. 6873-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 5 April 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 12 February 2019.

Your pre-enlistment physical examination, on 9 August 2018, and self-reported medical history both noted no psychiatric or neurologic history, symptoms, conditions or issues. As part of your enlistment application, on your medical history you expressly denied and/or answered in the negative for: (a) receiving counseling of any type, (b) depression or excessive worry, (c) ever been evaluated or treated for a mental condition, (d) have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past five years for other than minor illnesses, and (e) ever using marijuana in any form.

On 23 April 2019, your command notified you that you were being processed for an administrative discharge by reason of defective enlistment and induction due to an erroneous enlistment as evidenced by a physical or mental condition that existed prior to entry (EPTE) into the naval service. You waived your rights in writing to consult with counsel, submit a written statement, and to a General Courts-Martial Convening Authority review of the discharge. On the same day, the Commanding Officer (CO) of [redacted], [redacted] approved and directed your uncharacterized entry level separation (ELS). The CO noted you were diagnosed, on 19 April 2019, with a brief psychotic disorder (EPTE). The CO thus concluded an erroneous enlistment had occurred. The CO determined that your disqualifying psychiatric condition affected your potential for the performance of your duties and responsibilities, and the CO determined that you posed a risk if you were retained in the naval service. Ultimately, on 1 May 2019, you were discharged from the Navy for an erroneous enlistment with a ELS discharge characterization and assigned an RE-3E reentry code.

On 8 March 2023, the Naval Discharge Review Board (NDRB) denied your application for relief. The NDRB determined that your discharge was proper as issued and that no change was warranted. The NDRB stated in the "discussion" section to their rationale and decision, in part:

> …the Applicant had a disqualifying psychiatric condition that affected his potential to service [sic] and he posed a risk if retained. These comments and ADSEP stemmed from the Applicant's admittance for in-service medical treatment from 11 April to 1 May 2019 after he started hearing voices during boot camp. Military medical records noted the Applicant disclosed during treatment a significant history of marijuana use beginning at the age of 14 and indicated he started hearing voices pre-service at the age of 19. He became anxious about his condition, told his mom, and was evaluated by a civilian psychiatrist who prescribed him medication. The Applicant took this medication until January 2019, one month prior to leaving for boot camp. The Applicant failed to disclose any of this, including significant marijuana use, during entrance processing or after being admitted to the delayed entry program on 10 October 2018. Had this been disclosed, it is unlikely he would have been allowed to enlist given the extent and significance of his pre-service mental health condition and treatment. It is also important to note the Applicant was not separated for fraudulent entry for failing to disclose his significant marijuana use and medical condition during the enlistment process.

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 changes to your reentry code and narrative reason for separation. You contend that: (a) you were injured while on active duty, (b) the discharge was erroneous due to both procedural and equity reasons, (c) the underlying basis of your separation was procedurally defective at the time of your discharge, (d) the adverse action was unfair at the time based on equity considerations, and (e) the discharge is inequitable now. 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 13 February 2024. The Ph.D. stated in pertinent part:

> There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active-duty and post-service mental health records describing the Petitioner's diagnosis, symptoms, 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."

In accordance with the Kurta, Hagel, 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, based upon its review the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy contained no known errors. Based on your precise factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified in separating you for an erroneous enlistment.

The Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor's eligibility for enlistment. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined the record clearly reflected that your deliberate concealment of certain material facts regarding your mental health history and pre-service drug abuse was willful and intentional and demonstrated you were unfit for further Navy service. The Board concluded that had you properly and fully disclosed

your pre-service mental health and treatment history, as well as the extent of your pre-service drug abuse, you would likely have been disqualified from enlisting in the Navy. The Board also concluded that the evidence of record did not demonstrate that you should otherwise not be held accountable for your actions.

Moreover, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your intentional failure to disclose your mental health history and pre-service drug abuse clearly merited your ELS discharge. 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. 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,

4/8/2024

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