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

[redacted]
Docket No. 6912-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 10 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

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 previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 5 July 2023. The facts of your case remain substantially unchanged.

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 to Honorable and change your narrative reason for separation to "Medical Separation." The Board considered your contentions that you had a severe mental health disorder prior to your enlistment into the Marine Corps and your mental health has severely affected your concentration and thought process. You assert that a correction to your record should be made due to the contaminated water at [redacted] having increased mental health issues of those stationed at [redacted], and there are legitimate studies and admissions from [redacted] representatives that the water was the cause of so many victims stationed at [redacted]. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 21 February 2024. The AO 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 submitted evidence of a pre-service diagnosis of ADHD, which could have led to inability to enlist and/or fraudulent enlistment. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., 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 AO 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 response to the AO, you provided supporting documentation that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 multiple administrative counselings (Page 11), NJPs, and SCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct, and there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological

symptoms or behavioral changes indicative of a diagnosable mental health condition. 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. The Board further noted that you were provided multiple opportunities to correct your deficiencies during your service; however, you continued to commit additional misconduct. Your multiple Page 11 counselings, failure to go to your appointed place of duty, disrespect in language, failure to maintain sufficient funds, disrespect toward a superior commissioned officer, unauthorized absence, operating a motorcycle after your license was under state suspension, and drunk and disorderly conduct, not only showed a pattern of misconduct but were sufficiently serious to negatively affect the good order and discipline of your unit. Finally, contrary to your contentions, the Board found your record of misconduct more than sufficient to support your administrative separation by reason of misconduct due to pattern of misconduct and the assigned characterization of service of OTH.

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, 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 your request does not merit relief.

Regarding your assertion concerning exposure to contaminated water at [redacted], Public Law 112-154, Honoring America's Veterans and Caring for [redacted] Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (DVA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

4/24/2024

[redacted]