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

[redacted]
Docket No. 7596-23
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 19 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 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy Reserve and served an initial period of active duty for training from 15 May 1974 until 27 November 1974. After you were honorably discharged from the Navy Reserve, you began a period of active duty on 1 May 1975. You immediately reenlisted on 10 February 1977, at which time your overall trait average was 3.57 and your record reflected no documented misconduct.

On 4 December 1979, you were convicted for a violation of Art. 86 of the UCMJ due to a period of unauthorized absence (UA) from 25 June 1979 through 29 September 1979. You were sentenced to 30 days of confinement at hard labor and reduction from the pay grade of E-5 to E-4.

After your release from confinement, you were subject to nonjudicial punishment on three occasions for a UA period on 3 January 1980, another UA period from 15 January 1980 through 9 July 1980, an Article 85 offense for intending "to remain away permanently" until your date of return, and two additional UA periods for failure to go at the time prescribed to your appointed place of duty on 21 April 1981 and absence from your unit without authority on 22 April 1981.

On 9 May 1981, you again absented yourself without authority and remained absent until your apprehension by civilian authorities on 2 July 1981. You were returned to military control, and charges for your additional UA period were referred to SPCM.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 25 September 1981 with an OTH characterization of service, your narrative reason for separation is "For the Good of the Service," your separation code is "KFS," and your reenlistment code is "RE-4." By the time you were discharged, your overall trait average had dropped to below 3.0, reflecting your repeated misconduct.

You previously applied to the Naval Discharge Review Board (NDRB) shortly after your discharge, which considered and denied your request on 11 January 1982. At that time, you contended that your overall history of good service outweighed your misconduct, and you attributed your misconduct to having family problems which you did not know how to deal with, thus resulting in your UAs.

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 final discharge to "Honorable" and your contentions that you developed a gambling addiction during your military service which was the root of all your problems and contributed to your misconduct. You assert that you were otherwise a 4.0 sailor with a Good Conduct Medal prior to your addiction taking over and state that your mental health problem was never addressed prior to getting the best of you and causing your discharge. For purposes of clemency and equity consideration, the Board noted you submitted evidence of your history of treatment for your gambling addiction since 2002, evidence you have become a certified gambling peer recovery specialist, and treatment progress notes from the Department of Veterans Affairs (VA).

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

> There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has received extensive treatment for a mental health condition that appears unrelated to his military service and his misconduct. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given prior statements attributing his misconduct to youth and immaturity with no reference to a gambling disorder. 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 insufficient evidence 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."

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 NJPs, SPCM, and SILT discharge, 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 in regard to the lack of evidence that your repeated UA periods were attributable to a mental health condition. As explained in the AO, throughout your disciplinary processing there were no concerns raised of a mental health condition that would have warranted a referral for evaluation and, even though you received extensive treatment for a mental health condition after your discharge, it is temporally remote to your military service and appears unrelated to your military service and misconduct.

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 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,

5/8/2024

[redacted]

Executive Director

Signed by: [redacted]