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

[redacted]
Docket No. 7641-23
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 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 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 25 September 2002. Your pre-enlistment physical examination, on 31 May 2002, and self-reported medical history

both noted no psychiatric or neurologic conditions or symptoms. You also expressly denied any pre-service alcohol abuse on your medical history.

In June 2004, you were convicted by civilian authorities in [redacted] for driving under the influence of alcohol (DUI). On 22 June 2004, Substance Abuse Rehabilitation Program (SARP) personnel at the [redacted] screened you for substance abuse. Your screening revealed that you did not appear to meet the diagnostic criteria for alcohol abuse or dependency. SARP personnel recommended and directed that you attend the "Alcohol Impact, 3 Day Course," and additionally recommended you complete the "Life Skills Course" at FFSC.

However, in August 2005, you again were convicted by civilian authorities in [redacted] for another DUI offense. Following your second DUI conviction, on 20 September 2005, you were notified of administrative separation proceedings by reason of alcohol rehabilitation failure. You were processed using "notification procedures," which meant that you were not entitled to request an administrative separation board to hear your case, but the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). You elected your rights to consult with counsel and submit a written statement for consideration by the Separation Authority, but waived your right to General Courts-Martial Convening Authority review of your proposed separation. Ultimately, on 30 September 2005, you were discharged from the Navy for alcohol rehabilitation failure with a GEN characterization of service and assigned an RE-4 reentry code.

On 30 December 2014, the Naval Discharge Review Board (NDRB) denied your initial application to upgrade your discharge. The NDRB determined that your discharge was proper as issued and that no relief was warranted. You did not proffer any mental health contentions with your NDRB upgrade request. On 13 July 2016, this Board denied your initial petition for a discharge upgrade. You did not proffer any mental health contentions with your petition.

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 contentions that: (a) you were not properly diagnosed or treated properly by the military, (b) if you were treated differently and diagnosed correctly you would still be serving this country you love so much, (c) you have been diagnosed at a VA clinic with PTSD, traumatic brain injury, and alcoholism that were all set in motion by your Navy service, and (d) you also completed an alcohol rehabilitation class on your own to get the proper help that was not provided by the U.S. Navy. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 21 February 2024. The Ph.D. stated in pertinent part:

> Petitioner was diagnosed with an alcohol use disorder during military service. Problematic alcohol use is incompatible with military readiness and discipline and

> does not remove responsibility for behavior. Unfortunately, he has provided no medical evidence to support his claims of other mental health concerns. His in-service misconduct appears to be consistent with an alcohol use disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than alcohol use disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, 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, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. Lastly, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only are not binding on the Board.

The Board was not persuaded by your argument that the Navy was responsible for your second DUI approximately fourteen (14) months after your first such offense. The Board determined you were responsible that your behavior conformed to acceptable standards of good order and discipline. Further, the Board was also not persuaded by your contention that you were purportedly misdiagnosed. The Board determined your contention that if you were treated differently and diagnosed correctly that you would still be in the Navy today, was speculative and not supported by any evidence. Your available records indicated that you did not engage in any alcohol-related misconduct or abuse in between your civilian DUI convictions that occurred approximately 14 months apart, nor did you act or behave in such a way indicating: (a) a likelihood you would continue to allow alcohol to interfere with your job performance, and/or (b) you were consistently or periodically abusing alcohol and were somehow a safety risk to yourself and others. Your performance evaluations indicated that you otherwise adequately

performed your duties and behaved satisfactorily until such time you made the conscious and intentional decision to drive while intoxicated a second time.

The Board also believed you received considerable leniency from your command when they processed you for separation for an alcohol rehabilitation failure using notification procedures with the least favorable discharge characterization eligible being a GEN. The Board determined your command could just have easily alternatively processed your DUI convictions for misconduct due to the commission of a serious offense, misconduct due to a civil conviction, and misconduct due to a pattern of misconduct, all individually and/or collectively with the potential for you to receive an under Other Than Honorable conditions (OTH) characterization of service. The Board believed that your repeat DUI misconduct would have likely resulted in an OTH discharge characterization based on the seriousness of the misconduct.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under GEN or OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

4/10/2024

[redacted]