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

Docket No. 9640-23
Ref: Signature Date

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 June 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 entered active duty on 5 December 2000. Upon entry into the naval service, you annotated on all your entry documents, to include your application for a security clearance, that you did not use any illegal drugs. On 17 December 2000, you started a period of unauthorized absence (UA) that ended on 16 January 2001. You were seen by medical upon your return and stated that you were using cannabis twice a week for a period of four to

five years. On 22 January 2001 you were found to be drug dependent and advised to seek treatment.

Subsequently, you were notified of administrative separation processing for defective enlistment and induction due to erroneous enlistment as evidenced by medical evaluation of cannabis dependence and waived your right to an administrative separation board. The Commanding Officer (CO) directed your discharge and you were so discharge on 1 February 2001.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your desire for a change to your narrative reason for separation and contentions that you never failed a drug test after enlisting in the Navy, you informed the Navy psychologist of the trauma you experienced as a teenager and admitted to smoking marijuana as a coping mechanism, and there is a strong stigma attached to the terminology of "Drug Abuse" for simply admitting to prior recreational use of marijuana. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Since you contend that you suffered from PTSD and another mental health condition that may have mitigated your misconduct, the Board considered the AO. The AO stated in pertinent part:

> Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Substance 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 PTSD and other mental health concerns. His in-service misconduct appears to be consistent with a substance use disorder, rather than evidence of another condition. 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 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 substance use disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned narrative reason for separation remains appropriate. In making this finding, the Board considered your failure to disclose your drug use and admission to abusing drugs. Further, the Board was not persuaded by your contentions of not failing a drug test upon entry, since you admitted to drug abuse. Finally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than substance use disorder. As explained in

the AO, you provided no medical evidence to support your claims of PTSD and other mental health concerns. Therefore, 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,

6/16/2024

Executive Director
Signed by: