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

[redacted]
Docket No. 10018-23
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 12 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 15 April 2024. Although you were afforded an opportunity to submit an AO rebuttal, 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 Navy and began a period of active duty on 15 July 2003. Unfortunately, the documents pertinent to your arrest by civilian authorities and subsequent conviction are not in your official military personnel file. 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. Post-discharge medical noted indicate your civilian conviction was related to intimate partner violence.

On 3 June 2005, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to civilian conviction. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. Ultimately, the separation authority directed your discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service by reason of misconduct due to civilian conviction. On 16 June 2005, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 26 March 2019, based on their determination that your discharge was proper as issued.

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 and contentions that: (1) the circumstances surrounding your discharge were not adequately assessed, (2) at the time of your discharge you were dealing with the profound effects of undiagnosed PTSD & TBI that were direct results of traumatic events you experienced during your service, (3) you were in a vulnerable state, trying to make sense of the emotional and psychological turmoil that you were undergoing, (4) you were "discarded" instead of receiving the support and understanding that you desperately needed, (5) you ultimately recognized the severity of your condition and sought help from the Department of Veterans Affairs (VA), and (6) the VA's intervention was instrumental in helping you understand and cope with your PTSD. For purposes of clemency and equity consideration, the Board considered the documentation 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 15 April 2024. The AO stated in pertinent part:

> There is no evidence of a mental health diagnosis during military service. Temporally remote to his military service, he has received service connection for PTSD. There is insufficient evidence of TBI. There is insufficient evidence to attribute his misconduct to PTSD. Additional records (e.g., in-service or 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI or [evidence] to attribute his misconduct to PTSD."

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 civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting nature of your civilian conviction. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or TBI. As the AO explained, there is no evidence of a mental health diagnosis during your military service. Additionally, the Board noted that your previously reported basis for PTSD involved a combat engagement with insurgents; however, you reported no combat engagements in your Post-Deployment Health Assessment and there is no evidence you were awarded a Combat Action Ribbon. Therefore, the Board questioned your credibility and 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.

As a result, the Board determined significant negative aspects of your active duty service outweighed the positive and continues to warrant a GEN 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 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,

6/26/2024

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