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

[redacted]
Docket No. 0392-24
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 22 July 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. 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 Navy and commenced active duty on 12 August 1980. After a period of continuous Honorable service, during which you received non-judicial punishment (NJP) for possession of marijuana and were promoted to E-4, you reenlisted on 6 April 1984 and commenced a second period of active duty.

On 9 August 1984, you pleaded guilty at General Court Martial (GCM) to conspiracy to wrongfully distribute marijuana, wrongful possession of drug paraphernalia, four specifications of wrongful distribution of marijuana, wrongful possession and wrongful use of marijuana. You were sentenced to reduction in rank to E-1, forfeitures, confinement at hard labor, and a Dishonorable Discharge (DD). The convening authority ordered a retrial, on 8 February 1985, because the military judge failed to inform you that that conduct to the prejudice of good order and discipline, or service discrediting conduct was an element contained in two of your charges. On 22 March 1985, you were retried for, and pleaded guilty to, the same offenses. You were sentenced to reduction in rank to E-1, forfeitures, confinement at hard labor, and a Dishonorable Discharge (DD). Subsequently, the findings and sentence in your GCM were affirmed and you were issued a BCD in April 1987.

Previously, you twice applied to this Board for an upgrade to your characterization of service. In the first application, you requested clemency for your post-service conduct and contended that your discharge was unjust because you got involved with the wrong crowd. Your case was administratively closed on 22 July 2015 because the Board was unable to obtain your service record. In the second application, you requested clemency for your post-service conduct and contended that your discharge was unjust because you got involved with the wrong crowd and that you suffered from discrimination. Your second case was administratively closed on 6 July 2017 because the Board was unable to obtain your service record.

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 change your discharge characterization of service and your contentions that you suffered from discrimination, that one of your superior officers was having an affair with your wife while you were on deployment, and you requested clemency due to your post-service conduct and achievement. In addition, you assert that you suffer from cancer caused by your service at [redacted]. For purposes of clemency and equity consideration, the Board considered your statement and advocacy letters describing post-service accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 28 May 2024. The AO stated in pertinent part:

> Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have mitigated the circumstances of his separation.
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> In April 1985, the Petitioner was evaluated by a military psychologist, who found no evidence of psychosis, neurosis, or suicidal ideation. There were "no psychiatric contraindications to his release or discharge." He was diagnosed with Marijuana Dependence. He "stated that a friend of his…picked up some marijuana and…ask[ed him] to hold it at his house… [H]e did allow this friend to keep the marijuana at his residence, from which this friend sold this marijuana."

> Petitioner provided a statement regarding racial discrimination experienced during military service, which contributed to his misconduct.
>
> There is no evidence that he was diagnosed with a mental health condition in military service. He has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as marijuana distribution is not a typical symptom of PTSD.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient 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 GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug offenses. The Board determined that illegal drug distribution and use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service or your misconduct. Finally, the Board also noted you provided no evidence, other than your personal statement, to substantiate your contentions of discrimination and PTSD.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a Dishonorable Discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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.

Regarding your assertion concerning exposure to contaminated water at [redacted], Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. Further, the Board noted you may be eligible for Department of Veterans Affairs (VA) benefits based on your first enlistment period. You should contact the nearest VA office of the 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,

8/5/2024

[redacted]