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

[redacted]
Docket No. 708-24
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 26 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider, as well as your AO rebuttal submission.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 5 August 1964. Your pre-enlistment physical examination, on 9 July 1964, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms, or any mental

health history or counseling. On your enlistment application, you disclosed two (2) pre-service arrests/convictions for grand theft auto in November 1962, and grand theft auto in July 1963.

On 18 November 1964, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On 12 January 1965, you received NJP for UA. You did not appeal your second NJP.

On 29 January 1965, you received NJP for failing to obey a lawful order. You did not appeal your third NJP. On 22 March 1965, you commenced a period of UA that terminated on 26 March 1965. On 2 April 1965, you received NJP for your 4-day UA. You did not appeal your fourth NJP.

On 5 July 1965, you arrived and disembarked at [redacted]. On 7 July 1965, you embarked on board the [redacted] and, on 20 July 1965, you departed [redacted] and arrived at [redacted] on 22 July 1965. On 1 August 1965, embarked again on board the [redacted], and you then disembarked at [redacted] on 31 August 1965.

On 30 January 1966, you commenced another UA that terminated on 4 February 1966. On 24 February 1966, pursuant to your guilty plea, you were convicted at a Special Court-Martial (SPCM) for your 4-day UA. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement at hard labor for two (2) months. On 5 March 1966, the Convening Authority (CA) approved the SPCM findings and sentence, except suspended a portion of the pay forfeitures.

On 12 April 1966, you were convicted at a second SPCM of UA, wrongful appropriation of a 1/4 ton truck (M-422), and wrongfully driving an M-422 without a motor vehicle operator's permit. You were sentenced to confinement at hard labor for four (4) months, and forfeitures of pay. On 1 June 1966, the General Court-Martial Convening Authority approved only so much of the SPCM sentence as it provided for confinement at hard labor for four (4) months, and a reduction in a portion of the pay forfeitures.

On 11 November 1966, you received NJP for misbehavior before the enemy. In the presence of the enemy you, endangered the safety of your battery, which was your duty to defend, by your intentional misconduct when instead of proceeding to your assigned listening post, you had illicit relations with a prostitute.

On 22 January 1967, you were convicted at a Summary Court-Martial (SCM) of UA, wrongfully appropriating a .45 caliber pistol, wrongfully driving an M-422 vehicle without a motor vehicle permit and being incapacitated for the proper performance of your duties as a result of previous indulgence of intoxicating liquor. You were sentenced to hard labor without confinement for fifteen (15) days and restriction for forty (40) days. On 23 January 1967, the CA approved the SCM findings and sentence.

On 10 February 1967, you embarked on board the [redacted] and departed [redacted]. You arrived and disembarked in [redacted] on 25 February 1967.

On 6 March 1967, you received NJP in [redacted] for UA (after escaping from custody), escaping from custody, and wrongful possession of a concealed weapon in an [redacted] bar. You did not appeal your sixth and final NJP. You departed [redacted] on 8 March 1967, and ultimately arrived at [redacted].

On 12 May 1967, you commenced a UA when you were arrested and held by civilian authorities for driving under the influence and car theft. Each day you were held in civilian custody was in a UA status day-for-day.

On 16 May 1967, you were convicted by civilian authorities for DUI. The Court referred your trial for grand larceny to Superior Court.

Your UA terminated on 10 Jun 1967. On 23 June 1967, you were convicted at a SPCM for your 29-day UA. You were sentenced to confinement at hard labor for four (4) months, and forfeitures of pay. On 3 July 1967, the CA approved the findings, but suspended any confinement in excess of twenty-five (25) days and forfeitures of pay in excess of one (1) month.

On 18 July 1967, you were convicted of misdemeanor temporary larceny of a car. The Court sentenced you to confinement for one (1) year (suspended), plus a fine and court costs.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to your civil conviction and for your frequent involvement of a discreditable nature with military authorities. You waived your rights to consult with counsel and to request a hearing before an administrative separation board.

On 10 August 1967, the Staff Judge Advocate to the Separation Authority (SA) determined your administrative separation was legally and factually sufficient. In the interim, on 16 August 1967, you commenced another UA and did not return to military authorities prior to your discharge. On 29 August 1967, the SA approved and directed your undesirable discharge by reason of unfitness. Ultimately, on 30 August 1967, you were discharged from the Marine Corps for unfitness with an under conditions Other Than Honorable (OTH) characterization of service and were assigned an RE-4 reentry code.

On 2 October 1974, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. You did not raise any psychiatric, neurologic, or mental health contentions with your first NDRB application. On 16 January 1976, the NDRB denied your discharge upgrade application again. You did not raise any psychiatric, neurologic, or mental health contentions with your NDRB application. On 28 October 1981, the NDRB denied your third discharge upgrade application. You again did not raise any psychiatric, neurologic, or mental health contentions with your NDRB application.

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 changes to your narrative reason for separation, separation code, separation authority, and

reentry code. You contend that: (a) your undiagnosed PTSD undoubtedly impacted your ability to perform to the best of your abilities, (b) under new clarifying guidance directives, this Board must take into account whether your mental health condition was a mitigating factor in the discharge, and your PTSD sufficiently explained and mitigated your misconduct, (c) your service was so meritorious that any other characterization besides fully Honorable would be clearly inappropriate, (d) your conduct before your [redacted] deployment had no bearing on your later discharge, (e) your early behavior can be seen in isolation as your unit found you fit to deploy to [redacted]. (f) after being in [redacted] for almost two consecutive years and serving in multiple campaigns, your negative conduct not only escalated, it but it also exploded in depth, and behavior, as evidenced by the steady decline in your conduct marks well into your deployment, (g) post-service you required multiple hospitalizations to deal with the homicidal and suicidal actions you were presenting, (h) there is no doubt your conduct leading to your discharge was solely due to your undiagnosed PTSD, later diagnosed as schizophrenia, and subsequently accurately diagnosed PTSD, (i) your service-connected PTSD must be given liberal consideration as a mitigating factor in your discharge, (j) had your service-connected PTSD been recognized at the time of your discharge, your PTSD would likely have excused or mitigated the misconduct leading to your OTH characterization, and you likely would not have received the same type of discharge if current screening procedures related to PTSD had been in place at the time of your discharge, and (k) your service was so meritorious that the Board should upgrade your discharge to "Honorable" as any other characterization would clearly be inappropriate. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 28 June 2024. The Ph.D. stated in pertinent part:

> Shortly following his separation from military service, the Petitioner had a series of psychiatric hospitalizations for a mental health condition. It is plausible that he may have been experiencing undiagnosed mental health symptoms while he was in service. Temporally remote to his military service, he has been diagnosed with PTSD attributed to military combat by a VA clinician. It is possible that the mental health symptoms that were considered psychotic in the period after his military service have been reconceptualized as symptoms of PTSD with the passage of time and increased understanding. It is plausible that his alcohol use may have increased following combat exposure and contributed to misconduct. However, it is difficult to attribute his misconduct solely to undiagnosed symptoms of PTSD or another mental health condition, given his pre-service behavior and misconduct prior to his combat deployment. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to solely to PTSD or another mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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, notwithstanding the AO, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and all of your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the cumulative and repetitive misconduct that formed the basis of your discharge. As a result, the Board concluded that your willful and persistent 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 unequivocally concluded that the severity of your repetitive, aggregate misconduct (consisting of six NJPs, a SCM, two SPCMs, and two civilian convictions), 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.

The Board also noted that Department of Veterans Affairs (VA) eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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 an OTH characterization 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 Marine.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your cumulative misconduct and disregard for good order in discipline clearly merited your discharge. 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,

7/31/2024

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