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

[redacted]
Docket No. 2319-24
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 20 September 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 to 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) of a qualified mental health provider and licensed clinical psychologist, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 26 September 1985 with a pre-service history of marijuana use. During your first year of service, you had two prolong periods of unauthorized absence (UA) from 15 April 1986 to 3 July 1986 and from 3 July 1986 to 9 September 1986, for which you were tried and convicted by Special Court-Martial (SPCM) for two violations under Article 86 of the Uniform Code of Military Justice (UCMJ). Your sentence

included 60 days of confinement and two months forfeiture of $200 pay per month. Following your conviction and release from confinement, you were administratively counseled, on 24 November 1986, that you were being retained on active duty; however, you were advised that further misconduct could result in your administrative separation.

On 30 December 1986, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and commission of a serious offense, with a recommendation for your discharge under Other Than Honorable (OTH) conditions. You elected to waive your right to request a hearing before an administrative separation board. A medical evaluation incident to your substance abuse reported that you were not drug dependent and had no mental disorders. On 9 January 1987, you were subject to nonjudicial punishment under Article 86 of the UCMJ due to failure to go at the time prescribed to your appointed place of duty and under Article 92 for violation of a lawful general regulation by possession of drug abuse paraphernalia. You were confined to bread and water for three days with a $329 forfeiture of pay. Ultimately, you were discharged with an OTH characterization for drug abuse on 3 February 1987.

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, Hagel, and Kurta Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions you have suffered from a mental health condition due to post-traumatic stress disorder (PTSD) from trauma experienced during your military service. You describe that your job as a boatswain's mate required you to "hang" in dark places below the deck, and you became a claustrophobic as a result of working in extremely confined spaces for hours at a time. You did not want to acknowledge the mental impact your fear had on you and attempted to cover this fear through self-medication with marijuana, so you "would not go insane due to fear." You state that you have seen multiple mental health providers since your discharge and that it has been determined your mental health issues began during your Navy active duty. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you contend that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

> The Petitioner submitted outpatient psychiatric records from Community Mental Health whereby he was seen for medication management between June 2022 and November 2023. These records indicate diagnoses of Schizoaffective Disorder, PTSD, Alcohol Use Disorder, Moderate, and Cocaine Use Disorder, Moderate. Unfortunately, none of the records indicates the rationale for, or etiology of his PTSD diagnosis. Furthermore, his statement that he suffered from claustrophobia is a separate diagnosis altogether from PTSD. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of mental health conditions that are temporally remote to service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that drug paraphernalia possession 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. Additionally, the Board concluded that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. As explained in the AO, none of the records indicates the rationale or etiology for your PTSD diagnosis. Furthermore, your statement that you suffered from claustrophobia is a separate diagnosis altogether from PTSD. Finally, there is no evidence you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. Therefore, the Board 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.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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 the 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 is attached 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,

10/28/2024

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