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

[redacted]
Docket No. 2705-24
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 13 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 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. Although you were afforded an opportunity to submit an AO rebuttal for consideration, 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 originally enlisted in the U.S. Navy and began a period of active-duty service on 12 August 1981. Your pre-enlistment physical examination, on 3 June 1981, and self-reported medical

history both noted no psychiatric or neurologic issues or symptoms. Your last reenlistment occurred on 9 July 1993 (for two (2) additional years) and, on 22 November 1993, you further extended such enlistment.

During mid-1995, you were involved in a domestic violence incident involving your two children. According to court filing in the Juvenile Court of [redacted]: "On May 17, 1995 the mother whipped her children with an extension cord leaving extensive bruises on [son's] back and bruises on [another son's] back." The Court specifically found, "that the mother lost control on this occasion and caused extensive bruising on the children."

On 26 February 1996, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for two (2) separate specifications of assaulting a child under the age of sixteen years old with an extension cord. You were sentenced to confinement for two (2) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and to be reprimanded.

On 8 April 1996, the Convening Authority approved the SPCM sentence as adjudged. Upon the expiration of your enlistment, your command did not recommend you for reenlistment. Ultimately, upon the completion of your required active service on 6 May 1996, you received an Honorable discharge.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire to change your reentry code, reinstate you to paygrade E-5, and remove derogatory matters related to "felony assault" from your record. You contend that: (a) because of the KKK card you found on your windshield, (b) you were the victim of bias, prejudice, and racism, (c) you dedicated nearly 15 years of your life and sacrificed time with your sons, due to being a single parent in the military, (d) you put your country before your family, (e) following your court-martial you were shackled in front of your children and were put in the brig for three months, leaving your children and sick mother on the street in a different state for over 13 hours waiting for a ride to come from [redacted] to pick them up and take them back to [redacted]. For purposes of clemency and equity consideration, the Board considered the entirety of 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 1 August 2024. The Ph.D. stated in pertinent part:

> There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout her disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to her military service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with her misconduct or the circumstances of her separation, which were the expiration of

her enlistment contract. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her 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 her misconduct or the circumstances of her separation from service to PTSD or another mental health condition."

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, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated your misconduct. As a result, the Board concluded that your misconduct was not due to 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 misconduct involving domestic violence 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 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. The Board also determined that you did not provide convincing evidence to substantiate your claims of being a victim of bias, prejudice, harassment, and/or racism.

The Board, in its review of the entire record and petition, considered your contentions and your materials submitted. The Board noted it is only authorized to consider applications for administrative corrections to a Petitioner's DD Form 214 to correct an error or an injustice. However, as your military record now stands, the Board determined there are no material errors with your DD Form 214 for your period of active duty service ending 6 May 1996. The Board noted that you received an Honorable discharge upon the completion of your required active service, and the Board concluded your DD Form 214 or record, as it currently stands, contains no adverse entries requiring correction.

The Board noted that, although it cannot set aside a court-martial conviction, it might grant clemency in the form of making certain changes to your DD Form 214 and/or service record. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you pleaded guilty to, and were properly convicted at a SPCM of, serious misconduct involving domestic violence. Additionally, the Board determined that your

command was justified in not recommending you for reenlistment due to your SPCM conviction involving acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to remove derogatory matters from your service record solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your SPCM conviction and sentence, or discharge, and the Board concluded that your misconduct clearly merited your discharge (and corresponding non-reenlistment recommendation) prior to reaching retirement eligibility. 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,

9/25/2024

[redacted]