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

[redacted]
Docket No. 3511-24
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 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.

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.

A review of your record shows that you enlisted in the Navy and commenced active duty on 16 November 1998. On 23 October 2009, a medical provider at the [redacted], [redacted], recommended that you be disqualified from submarine and nuclear field duty after you reported to an Emergency Department due to a suicide attempt on 7 October 2009. After this, you were removed from your boat and sent to shore duty with [redacted], [redacted], at which time you received a performance evaluation. Your final evaluation marked you as Early Promote and contained laudable comments. On 22 November 2009, Commander, [redacted], [redacted], [redacted] Medical Officer, disqualified you for submarine and nuclear field duty due to having a history of Major Depression and suicidal ideation requiring medication. On 8 December 2009, [redacted] found you to be physically unqualified for submarine service and removed your Submarine Service (SS) qualification.

On 1 February 2010, the Bureau of Medicine and Surgery (BUMED) found that you did not meet the standards for work in the submarine or nuclear field. On 26 February 2010, you were found to be medically qualified for separation. Your administrative discharge processing paperwork does not appear to be available in your service record, and you did not provide it, but available documents reveal that on 14 June 2010, you were formally counseled that, despite your discharge, you were eligible to reenlist in the Navy with the exception of a waivable disqualifying factor. Thereafter, you were discharged on 18 June 2010. There is no available evidence that you sought to reenlist in the Navy.

In your petition, you request to have you narrative reason for separation changed from "condition, not a disability" to "disability" and that your separation program designator be conformed to reflect "disability." In support of your request, you assert that your selective reenlistment bonus was recouped. You argue that the Page 13 that you signed when you received the bonus informed you that you would only forfeit the bonus due to things that are within your control and that your mental health crisis was not within your control.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits (and thus have your narrative reason for separation changed to "disability" as you requested) you would have had to be referred to the Disability Evaluation System (DES) while you were in service. In order to be found unfit within the DES, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES. In fact, the record evidence from your time in service demonstrates that you were specifically found to not have a disabling condition within the meaning of the DES, and you provided no evidence to the contrary. Indeed, the Board observed no evidence that any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the disability evaluation system. To the contrary, the medical documentation specifically described your condition as one that was "not" a disability. Further, you received a pre-separation medical examination which found you fit for separation. In addition, your last available performance evaluation from an operational command reflected no shortcomings, ranked you as "early promote," and recommended your retention. Thus, the Board found the evidence was insufficient to support that you qualified for a disability retirement. With respect to your assertion that your discharge was through no fault of your own, and thus your bonus should not have been recouped, the Board observed that, pursuant to OPNAVINST 1160.8A, recoupment of an SRB is appropriate where a Sailor "Loses qualification in the bonus skill (i.e., removal of NEC or rating designator)," which appears to have occurred in your situation. As noted above, you were not found to have a disability, thus the Board found no basis for granting

the relief that you seek. In sum, in its review and liberal consideration of all of the evidence, the Board did not observe any error or injustice in your naval records. 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,

8/7/2024

[redacted]