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

[redacted]
Docket No. 3799-24
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 25 October 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 a qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 3 April 1983. Your enlistment physical examination, on 23 November 1982, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms, or counseling.

On 16 March 1984 you received non-judicial punishment (NJP) for a breach of the peace. You did not appeal your NJP.

On 10 December 1984, you were convicted in the [redacted] of reckless driving. The Court ordered you to pay a fine and court costs, and your drivers' license was suspended for fifteen (15) days. On 14 December 1984, you received NJP for an unauthorized absence (UA). You did not appeal your NJP.

On 16 May 1985, your command issued you a "Page 13" retention warning (Page 13) documenting your repeated disciplinary infractions, disturbing the peace, and leaving your appointed place of duty. The Page 13 specifically advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

However, on 1 July 1985, you commenced a period of UA that terminated on 29 July 1985. You commenced another UA on 19 August 1985 that terminated when you turned yourself in to military authorities at a recruiting station in [redacted] on 18 September 1985. Following your surrender, you did not report back in a timely fashion to your command as ordered and you incurred another full day of UA. On 26 September 1985, you received NJP for your 28, 30, and 1-day UAs. You did not appeal your NJP.

On 3 October 1985, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board. Ultimately, on 31 October 1985, you were separated from the Navy for misconduct with an Other Than Honorable (OTH) discharge characterization and were assigned an RE-4 reentry code.

On 2 January 2018, this Board denied your initial discharge upgrade petition. On 13 January 2020, this Board denied your petition for reconsideration.

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 contention that: (a) your previous narrative and facts were incorrect causing decades of harm, (b) today's evidence and findings you pray will lead you to a successful long-awaited upgrade relief, (c) you are respectfully requesting to be judged by the Hagel Memorandum. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) and psychiatrist reviewed your contentions and the available records, and issued an AO dated 4 September 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

> In February 1985, the Petitioner was involved in a motor vehicle accident…in which his vehicle was struck from the rear and the patient sustained a whiplash

> injury to his neck…he was placed in a [redacted] collar…for immobilization. He returned to his ship…and was referred to the Naval Hospital…for evaluation. Upon arrival, the patient complained of mild neck tenderness in the collar but he had no paresthesias, weakness, or pain in his extremities. There were no neurological deficits.
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> Petitioner was evaluated on multiple occasions during his military service, following his February 1985 car accident. At each evaluation, his neurological examination was determined to be intact. While he was placed on limited duty, he was not deemed unfit for service. There is no evidence of a diagnosis of a mental health condition in service.
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> Temporally remote to his military service, the Petitioner has received diagnoses of PTSD, TBI, and another mental health condition. A VA clinician has considered that these may be attributed to his military service. It is possible that these conditions could be related to in-service head injuries. Repeated head injuries can result in multiplicative symptoms consequence. However, because the Petitioner continued to box after military service and did not demonstrate neurological deficits in service, it is difficult to attribute post-service neurological or TBI symptoms solely to military service.
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> There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition. The Petitioner had a history of driving infractions prior to entering military service which appears to have continued in service. The timeline of the onset of the Petitioner's symptoms is inconsistent throughout the record, likely due in part to the Petitioner's poor recall or reliability as a reporter. There is insufficient evidence to attribute UA and breach of peace to mental health concerns.

The Ph.D. and psychiatrist concluded, "it is my clinical opinion there is post-service evidence from a VA provider of diagnoses of PTSD, TBI, and another mental health condition that may be attributed to military service. There is insufficient evidence attribute his misconduct to PTSD, TBI, 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 TBI, mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such TBI or mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to TBI or mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any TBI or mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct 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.

Additionally, the Board 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 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 characterization under OTH conditions 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 Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your 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,

11/8/2024

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