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

[redacted]
Docket No. 3984-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 16 October 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice was 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 25 November 2014 and 19 December 2018. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 19 December 1983, based on their determination that your discharge was proper as issued. The facts of your case remain substantially unchanged.

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 to upgrade your discharge character of service, change your reenlistment code to "RE-3H," change your narrative reason for separation to reflect a medical discharge, remove "deserter" status from all of your personnel files, and lift the statutory bar from all compensatory/healthcare benefits provided by the Department of Veteran Affairs (VA). The Board considered your contentions that: (1) you incurred TBI, PTSD, and other mental health concerns during a motor vehicle accident occurring in September 1973, (2) your unauthorized absence (UA) was contributed to the denial of your leave request in which you sought to help assist your family with the treatment of your mother's health condition, (3) you acquired "myeloma, melanoma, kidney disease, prostate cancer, gangrene" and your child was born with autism caused by the contaminated water at Camp Lejeune, and (4) you were promised that your discharge would automatically be upgraded within six months of your discharge. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 20 August 2024. The AO stated in pertinent part:

> There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. There is insufficient evidence of residual symptoms of head injury consistent with TBI attributed to military service. Temporally remote to his military service, a civilian provider has diagnosed him with PTSD, although the precipitating traumatic event is unclear. He has also received a diagnosis of another mental health condition (depression) that is temporally remote and appears unrelated to military service. While it is plausible that grief over the death of his step-father or stress over the illness of his mother may have contributed to mental health concerns in service, it is difficult to attribute his repeated, extended UA to a mental health condition, particularly given the absence of symptoms severe enough to warrant treatment for decades following service.

The AO concluded, "it is my clinical opinion there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your non-judicial punishments, special court-martial, and good of the service (GOS) request discharge in lieu of trial by court-martial for unauthorized absence, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Additionally, the Board

noted that the misconduct that led to your GOS request was substantial[1] and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Convening Authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO that, while there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence of TBI that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition. As the AO explained, there is no evidence that you were diagnosed with a mental health condition in military service and, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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 otherwise not be held accountable for your actions.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Furthermore, based on your administrative separation processing for misconduct that resulted in an OTH characterization, the Board determined that you were ineligible for a "medical discharge" even if there was evidence to support your referral to the Disability Evaluation System. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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.

Regarding your assertion concerning exposure to contaminated water at [redacted], Public Law 112-154, Honoring America's Veterans and Caring [redacted] Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (DVA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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

[1] The Board considered that your period of unauthorized absence was approximately 237 days.

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,

11/5/2024

[redacted]