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

[redacted]
Docket No. 4632-24
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 November 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the U.S. Marine Corps and commenced active duty on 12 February 1968. You deployed and participated in Operations against communist forces in [redacted] between 11 October 1968 to 18 February 1970. During this period, you commenced a period of UA on 18 June 1969 that totaled 32 days. On 25 July 1969, you were found guilty at summary court-martial (SCM) for the 32 days UA. You were sentence to reduction in rank and forfeiture of pay. Between 27 July 1969 and 14 September 1969, you commenced three periods of UA that totaled approximately 41 days. On 18 December 1969, you were found guilty at general court-martial (GCM) for two specifications of violating a lawful general order by being in an off limits area,

assault, wrongful possession of marijuana, and the three recent period of UA. You were sentenced to forfeiture of pay, two years confinement and a Bad Conduct Discharge (BCD). During the review process of your conviction, the Court of Military Appeals affirmed all of your sentence except your BCD. Subsequently, you commenced three periods of UA involving 222 days, 192 days, and 22 days. On 20 March 1973, you were found guilty at special court-martial (SPCM) for 189 days UA. You were sentence to forfeiture of pay, confinement, and a BCD. After completion all levels of review, you were discharged on 13 December 1973 with a BCD.

Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your requests, on 16 June 1977 and 18 February 1981, after determining your discharge was proper as issued.

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 contentions that you were not in the right mind after being wounded and receiving the Purple Heart, and you desire veterans' benefits to treat current medical conditions. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, medical documents, and a letter from the Department of Veterans Affairs (VA).

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 17 September 2024. The Ph.D. stated in pertinent part:

> Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Temporally remote to his military service, a VA clinician has diagnosed him with PTSD and TBI attributed to combat exposure. Unfortunately, it is difficult to attribute his misconduct solely to symptoms of PTSD and TBI, given a history of UA prior to his deployment.

The Ph.D. concluded, "it is my clinical opinion that there is post-service evidence from a VA clinician of diagnoses of PTSD and TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or TBI."

In response to the AO, you provided additional documents regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 SCM, SPCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military regulations. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct solely to PTSD or TBI. As explained in the

AO, it is difficult to attribute your misconduct solely to symptoms of PTSD and TBI, given a history of UA prior to your deployment. 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. Additionally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to the awarding of a second BCD. 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 a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge rehabilitation, 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,

11/29/2024

[redacted]