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

[redacted]
Docket No. 4762-24
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 23 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 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy for training on 2 October 1972. You were discharge on 30 November 1972 to accept a commission as an officer in the Naval Reserve. On 1 December 1972, you accepted and appointment in the Naval Reserve as an ensign.

In May 1977, you were referred to general court-martial (GCM) for seven specifications of Article 92, one specification of Article 12, two specifications of Article 107 and two

specifications of Article 134. On 29 June 1977, additional charges of two specifications of Article 92, one specification of Article 121, and one specification of Article 133 were referred.

On 21 November 1977, you submitted your resignation from the naval service with an Honorable discharge. On 23 December 1977, the Chief of Naval Personnel (CNP) denied your request and directed your case be considered by a Board of Officers should you chose not to submit a good of the service discharge request. You elected a Board of Officer's review.

On 8 February 1978, the Board of Officers convened and recommend that you be discharged from the naval service with an Other Than Honorable (OTH) characterization of service. On 20 April 1978, you were provided a copy of the Board's recommendation and elected to submit a statement. On 10 May 1978, you submitted a rebuttal statement that raised a number of due process issues related to your board hearing. After completion of the review of your case, the Assistant Secretary of the Navy (Manpower, Reserve Affairs, and Logistics) directed your discharge with OTH. You were so discharged on 28 July 1978.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 3 March 1982, after determining your discharge was proper as issued and no change is warranted.

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 due to your PTSD condition and contention that the law has changed. For purposes of clemency and equity consideration, the Board noted you provided medical documents but no supporting documentation describing post-service accomplishments or advocacy letters.

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 29 August 2024. The Ph.D. stated in pertinent part:

> Petitioner was properly evaluated during military service and denied symptoms of a mental health condition. Temporally remote to his military service, he has received a diagnosis of PTSD from VA clinicians that has been attributed to military service in part. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given in-service denial of misconduct or intentional wrong-doing. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is post-service evidence from VA mental health providers of a diagnosis of PTSD that may be attributed to military service in part. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

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 the

Board of Officers findings and recommendation, 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 authority and regulations. Further, the Board noted that your case was properly processed in accordance with applicable regulations and your discharge was effected after a thorough review by higher authority. Additionally, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, available records are not sufficiently detailed to provide a nexus with your misconduct, particularly given in-service denial of misconduct or intentional wrong-doing. 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.

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. 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,

11/15/2024

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