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

[redacted]
Docket No. 5195-24
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 4 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

You enlisted in the Marine Corps Reserves and commenced a period of active duty on 15 October 2001. You were honorably discharged upon completion of your required active

service on 6 September 2002. On 21 June 2004, you commenced a second period of active duty, from which you again received an Honorable discharge upon completion of your required active service on 11 June 2005. You were released back to your reserve unit.

On 5 February 2006, you were notified of your unsatisfactory participation in the reserves for missing your drill weekend. Likewise, on 8 March 2006, 11 May 2006, and 8 June 2006, you were notified of your unsatisfactory participation in the reserves for missed drill weekends.

Subsequently, on 14 June 2006, your command attempted to notify you, via a notification letter, of your pending administrative separation processing with an OTH discharge by reason of unsatisfactory participation in the reserves.

On 17 April 2007, you were again notified of your unsatisfactory participation in the reserves for missing your drill weekend.

On 14 May 2007, your command indicated that you had not returned to the area of responsibility (AOR) within the time limit indicated on the above-referenced notification letter. Ultimately, you were ordered discharged for unsatisfactory participation, on 2 November 2007, with an Other Than Honorable (OTH) characterization of service.

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 Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that your request for discharge should be granted in the interest of justice because your separation was based on misconduct exacerbated by PTSD acquired from your combat deployment in support of Operation Iraqi Freedom. For the purposes of clemency and equity consideration, the Board considered the evidence you provided, including your legal brief, your personal account of events, your Department of Veterans Affairs (VA) Rating Decision letter, and a Record of Psychiatric Treatment at [redacted] Services clinic.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 19 September 2024. The AO stated in pertinent part:

> Petitioner submitted VA compensation and pension rating indicating 30% service-connection for PTSD as of August 2023. He submitted records from [redacted] Services whereby he was seen intermittently for medication management between 2015 and 2018. He was diagnosed with "Anxiety NOS [Not otherwise specified] and Depression NOS, with a question mark next to PTSD, indicating a possible rule-out. He submitted a psychological evaluation that was also conducted at [redacted] indicating Anxiety Disorder NOS and "PTSD symptoms." The history portion of the evaluation noted only that there was an absence of IED blast concussive syndrome, and did not expound further on his deployment. He also submitted pre and post deployments screens whereby he denied any symptoms.

> There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He was warned on numerous occasions that he would be subject to unfavorable separation if he continued to miss drill periods. There is no evidence that he attempted to speak with his Command or rectify his status. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a 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 unsatisfactory participation in the reserves, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated absence had on the good order and discipline of your command. The Board also found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and determined that, although there is sufficient evidence of a post-service mental health condition that may be attributed to your military service, there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in the military service, or that you exhibited any symptoms of a mental health condition. Furthermore, the Board observed that you were warned on numerous occasions that you would be subject to unfavorable separation from the service if you continued to miss drill periods, and there is no evidence you attempted to speak with your command, or take any other steps, to rectify your military status. The Board also agreed with the AO that additional records, such as those outlined above, may aid in rendering an alternate opinion.

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,

11/27/2024

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