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

[redacted]
Docket No. 5415-24
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 1 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). Additionally, the Board also considered an advisory opinion (AO) furnished by 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 10 November 1986. Your pre-enlistment physical examination, on 29 May 1986, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. You disclosed a pre-service arrest for misuse of a credit card and pre-service marijuana usage on your enlistment application.

On 24 November 1986, while still in initial recruit training (aka “boot camp”), you commenced a

brief unauthorized absence (UA) that lasted approximately 3.5 hours. On 24 November 1986, your command issued you a "Page 13" warning (Page 13) for your UA. The Page 13 warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 1 December 1986, you received non-judicial punishment (NJP) for UA. You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting your NJP. The Page 13 expressly warned you that further deficiencies in performance and/or conduct could result in administrative separation under other than honorable conditions.

On 8 December 1986, you received NJP for assaulting or willfully disobeying a superior commissioned officer. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of unsatisfactory performance and/or conduct. On 9 December 1986, you elected your rights in connection with your pending administrative separation and specifically stated in writing that you did not object to your separation. Ultimately, on 12 December 1986, after only thirty-three (33) days on active duty, you were discharged from the Navy with an uncharacterized entry level separation (ELS), and assigned a separation code of "JGA" and an "RE-4" reentry code. The Board noted that the "JGA" separation code corresponded to the narrative reason for separation of "entry level performance and conduct," and was the appropriate designation in cases such as yours. In this regard, the Board determined you were assigned the correct characterization, narrative reason for separation, and reentry code based on your factual situation as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

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 to qualify for a disability claim and contentions that: (a) "I did not hold the mental capacity due to age as a[n] under developed emotionally equipped person," and (b) "I could not weigh out consequential ramafications [sic] that would result. Thus causing me mental stress." 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.) reviewed your contentions and the available records, and issued an AO dated 16 September 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

> Petitioner contended he incurred mistreatment during military service, which contributed to mental health concerns and separation from service. He submitted February 2018 and April 2023 evidence of mental health treatment for a diagnosis of Major Depressive Disorder, recurrent, mild, with anxious distress. Additional information was needed to rule out the possible presence of PTSD.

> There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received treatment for a mental health condition that appears unrelated to his service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service misconduct that appears to have continued in service.

The Ph.D. concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient 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. 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 that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your 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.

The Board also 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. Additionally, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except in those limited Navy cases: (a) when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case, or (b) where processing under a more serious basis is appropriate and where characterization of service under Other Than Honorable conditions upon discharge is warranted. Moreover, 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 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 uncharacterized ELS separation. 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,

11/19/2024

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