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

[redacted]
Docket No. 5462-24
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 10 January 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, and applicable statutes, regulations, and policies, to include to 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 opinions (AOs) from qualified medical professionals and your response to the AOs.

You previously applied to the Board contending a need for veterans' benefits from the Department of Veteran Affairs (VA) due to service-connected disabilities; wherein you asserted that you had been denied due process at the time of your separation due to having been severely injured. You also argued that your experience of a traumatic brain injury (TBI) contributed to your misconduct and that mental health concerns had contributed to your actions. Your request was denied on 27 May 2021 after application of liberal consideration and consideration of clemency. That 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 and contention that an Other Than Honorable (OTH) characterization of service was too harsh in comparison to the "minor" misconduct which occurred "after" you sustained multiple TBIs and post-traumatic stress disorder (PTSD) due to trauma from a violent attack by unknown assailants. You believe your misconduct warrant liberal consideration and should be mitigated as self-medication of mental health issues. For purposes of clemency and equity consideration, you submitted post-service clemency arguments to include that you have committed yourself to receiving proper treatment of your mental illnesses. In this regard, however, and as observed in the Board's decision regarding your previous application, post-discharge records indicated that you were involved in substance abuse and arrested for multiple instances of misconduct.

Because you primarily contend that a TBI, PTSD, or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the previously referenced AOs. They state in pertinent part:

> After review of the available objective clinical and non-clinical evidence, prior to Petitioner's 8/8/1987 hospitalization for headache due to SAH, other than Petitioner's statements contending TBI/headache from head injury and PTSD from a physical altercation, there are no outpatient or inpatient clinical records to indicate Petitioner sought medical or mental health evaluation or treatment for his contended conditions of debilitating headaches, TBI or PTSD. This is curious considering Petitioner's description of experiencing symptoms described as so severe and debilitating as to cause him to self-medicate with alcohol in lieu of seeking medical treatment.
>
> Available records from his initial hospitalization for SAH and then readmission following his motor vehicle accident, do support his contention of a head injury condition with loss of consciousness and memory loss for the car accident event consistent with a concussion and possible TBI. After discharge from service, clinical records provide evidence of diagnoses of PTSD, TBI, headaches, and Alcohol Use Disorder, though these were rendered temporally distant from Petitioner's military service.
>
> Regarding Petitioner's contention that his medical conditions of SAH and TBI from his motor vehicle accident mitigated his in-service misconduct behavior, his three NJPs (3/20/87, 4/10/87, and 6/5/87) occurred prior to his 8/8/1987 hospitalization for acute onset headache due to SAH and subsequent 8/30/1987 rehospitalization following his car accident with closed head injury/TBI.
>
> The Petitioner submitted two Psychological evaluations: One dated November 2019 (Diagnosed with PTSD, Headache and Alcohol Use Disorder), and the second dated April 2023. He also submitted a Neurological evaluation dated August 2023. He submitted active duty medical notes, a character reference, MRA [Magnetic Resonance Angiography] dated October 2019. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service (other than Alcohol Abuse) or that he exhibited any symptoms of a mental health condition. All of his misconduct occurred prior to his subarachnoid hemorrhage

> that was diagnosed in August 1987. Associated medical notes related to the fall that occurred pre-misconduct note only that his tibial tubercle and patella were injured, i.e., no documented head injury. He submitted evidence of post-service TBI events.

The AOs concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence that his misconduct could be attributed to a mental health condition or TBI." "[T]he preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that his in-service misconduct behavior was mitigated by a medical or mental health condition. Should any further evidence surface supporting mitigation of his in-service misconduct, resubmission would be appropriate."

In response to the AOs, you submitted rebuttal arguments in support of your application. After reviewing your evidence, the AOs 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 non-judicial punishments, 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 concurred with the AOs that insufficient evidence exists to find that your misconduct can be attributed to a mental health condition. As explained in the AOs, there was no evidence you were diagnosed with a mental health condition while in the military and a portion of your misconduct occurred prior to your TBI incidents. 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. Further, to the extent you were not separated from the Navy until after your discharge from hospitalization, the Board observed that you had already been notified of your administrative separation processing and were afforded all incident rights in June 1987; well before the events which transpire in August of that year and resulted in the hospitalization. The Board noted that your discharge was delayed in order to permit medical care and to ensure that you were medically fit for release from active duty.

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.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

2/3/2025

[redacted]