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

[redacted]
Docket No. 5948-24
Ref: Signature Date

[redacted]

Dear [redacted]

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 27 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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 20 July 1970. On 12 February 1971, you received non-judicial punishment (NJP) for absence from your appointed place of duty. On 24 March 1971, you received NJP for unauthorized absence (UA) and two specifications of absence from your appointed place of duty. On 1 April 1971, you were convicted by a summary court-martial (SCM) of wrongfully appropriate U.S. Currency, the property of another Marine. On 17 November 1971, you were convicted by a special court-martial (SPCM) of UA totaling 107 days. As punishment, you were sentenced to confinement and forfeiture of pay. On 19 April 1972, you were convicted by a SPCM of two

specifications of UA totaling 118 days. As punishment, you were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). On 19 March 1973, you were convicted by a SPCM of UA totaling 68 days. As punishment, you were sentenced to confinement, forfeiture of pay, and a BCD. Ultimately, the BCD was approved at all levels of review, and you were so discharged on 14 September 1973.

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 character of service and contentions that: (1) clemency is warranted because you continued to suffer the adverse consequences of a BCD due to PTSD, (2) your discharge was based on many offenses, but they were mostly minor offenses, (3) you faced racial discrimination which impaired your ability to properly serve, (4) you tried to serve and wanted to, but could not or was not able to because of discrimination, racism, physical abuse, and PTSD, (5) your commander abused his authority by discharging you with a BCD and not taking into consideration the physical assaults, the unresolved complaints, the mental stress you were under, and the discrimination that made it impossible for you to function, and (6) you believe that you should have had a medical discharge since you were not medically qualified to continue serving due to PTSD. For purposes of clemency and equity consideration, the Board considered your statement and the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 14 October 2024. The AO stated in pertinent part:

> Petitioner submitted VA compensation and pension rating noting 100% service connection for PTSD granted August 2023. He submitted a character reference from his sister. He submitted VA statement in support of claim. He submitted VA outpatient Mental Health intake dated April 2024 for "Depressive and trauma related anxiety." This note also mentions that his VA service-connection was terminated, as per Petitioner's anecdote. The Petitioner also submitted medical records from his time in service.
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> Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Although it is possible that the Petitioner was harassed while in service, there is no evidence of PTSD symptoms. Furthermore, although brief periods of UA could be expected with PTSD symptoms, prolonged and continued periods of UA despite punishment, and stealing are not typical behaviors caused by PTSD.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a diagnosis of Personality Disorder while in service. There is sufficient evidence of post-service temporally remote mental health diagnoses. There is insufficient evidence that all of 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 your misconduct, as evidenced by your NJPs, SCM and SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Further, the Board concurred with the AO that, while there is sufficient evidence of a diagnosis of personality disorder while in service and sufficient evidence of post-service temporally remote mental health diagnoses, there is insufficient evidence that all of your misconduct could be attributed to a mental health condition. As the AO explained, you were appropriately referred for psychological evaluation during your enlistment and properly evaluated. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. The Board determined that the record clearly reflected that your active-duty misconduct was willful and that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, based on your BCD, the Board determined that you were ineligible for a "medical discharge" even if there was evidence to support your referral to the Disability Evaluation System.

The Board also noted that your discharge was changed to a clemency discharge under an executive grant of conditional clemency in August 1975 and a certificate of completion of Reconciliation Service prescribed by Presidential Proclamation No. 4313 in September 1974. While the Board recognized the forgoing actions, they concluded that a recharacterization of your character of service was not warranted given your extensive periods of unauthorized absence during a time of war. Ultimately, the Board determined that you already received a large measure of clemency and any injustice in your record is already addressed by the clemency discharge you received.

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 your statement and 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,

12/20/2024

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