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

[redacted]
Docket No. 6255-24
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your reconsideration request 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 31 October 2024, has carefully examined your current request. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 also considered the advisory opinion (AO) issued as part of your previous application to the Board and your response to the AO.

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 previously applied to this Board requesting your punitive discharge to be upgraded to Honorable, your narrative reason for separation (and associated separation authority and

separation code) to be changed to "Secretarial Authority," and that your reentry code be changed to "RE-1." You claimed that you were experiencing depression and anxiety during service. Specifically, you argued you were undergoing mental health problems as a result of your deployment and that you were diagnosed with post-traumatic stress disorder (PTSD) after discharge. You also argued for clemency, stating there were extenuating circumstances surrounding your misconduct, and proffering you had shown exemplary behavior since your discharge. To support your contention, you provided medical evidence of mental health treatment and letters of support from fellow Marines attesting to your character and performance, as well as to the mental health symptoms you experienced.

Based on your assertion of a mental health condition, the previous Board considered the AO. The AO stated in pertinent part:

> 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, as theft is not a typical symptom of a mental health condition.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

In response to the AO, you provided rebuttal evidence contesting the findings of the AO. After reviewing your rebuttal evidence, the AO was modified to state, "[t]here is in-service evidence of mental health concerns. There is post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After considering your previous application, the Assistant General Counsel (Manpower and Reserve Affairs) directed no corrective action be taken on your naval record.

For this petition, you again request a discharge upgrade to Honorable and to change the narrative reason for separation on your DD Form 214 to "Secretarial Authority" and the re-entry code to RE-1. You argue you were improperly denied a medical evaluation board (MEB) in-service and were suffering from a mental health condition (MHC) at the time of discharge that made you unfit to continue to serve. As new evidence you included your Department of Veterans Affairs (VA) medical records and your attorney's brief.

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, disability consideration, and changes to your reason for separation and reentry code. In addition, the Board

considered your aforementioned contentions. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 general court-martial (GCM), 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. The Board noted that you were sentenced to a Dishonorable Discharge (DD) for your misconduct. In addition, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. The Board also agreed that theft is not a typical symptom of a mental health condition. 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. Furthermore, the Board determined you already received a large measure of clemency when the Naval Clemency and Parole Board mitigated your DD to a Bad Conduct Discharge (BCD). 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. Moreover, based on this finding, the Board also determined your assigned reason for separation, separation code, and reentry code remain appropriate.

Regarding your request for disability consideration, the Board determined, while there was evidence you had an MHC during your military service, there was insufficient evidence to establish that your MHC was an unfitting condition. The Board noted, while in service, no medical provider found your MHC limiting to your continued service. You were not placed on limited duty for any MHC, and you did not have any follow up mental health treatment past May 1992. Moreover, your 18 February 1993 separation physical stated you were not on any medications and that your health was excellent. Finally, even if a medical provider would have referred you to a MEB, the Board noted you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. The Board concluded that even if you had been dual processed, your GCM based DD would have taken precedence over any disability processing.

Consequently, 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,

11/23/2024

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