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

[redacted]
Docket No. 6709-24
9218-23
9062-22
3228-22
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.

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 21 November 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).

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board noted your previous requests[1], Docket Nos. NR20150009892, NR20210003368, NR20220003228, NR20220009062[2], and NR20230009218 requested the same relief, with the exception that, in your current submission, you now request "consideration for the purposes of reviewing [your] discharge for a Medical Evaluation Board," to have "any negative documents be set aside in their entirety" and "issuance of a corrected DD 215." Due to the new evidence presented, the Board considered your requests to upgrade your characterization of service to Honorable, change the narrative reason for separation to "Secretarial Authority," assign a RE-1 reentry code, review your discharge for a Medical Evaluation Board (MEB), assess for a medical retirement, temporary disability retirement list, or a military retirement, set aside any negative documents, and issue a corrected DD 215.

With respect to your repeated request to change your characterization, narrative reason, and reentry code, the Board determined the new evidence did not overcome the decisions of the five previous Boards. The Board further noted the decision documents starting with NR20220003228 specifically noted the Board's application of the Kurta, Hagel, and Wilkie Memos and the advisory opinion furnished by a qualified mental health professional. This Board concurred with the previous Boards' decisions and concluded there is insufficient evidence of an error or injustice warranting upgrading your characterization of service or changing your reason for separation and reentry code.

In your current request, for the first time, you seek to be "assess[ed] for a medical retirement, temporary disabled retirement list, or a military retirement" because you were "wrongfully separated from the military without proper medical disability system processing." Specifically, you contend the following:

(1) You sustained serious injuries[3] during service and should have been medically assessed and separated as service-connected and unfit for duty but there was a "rush to judgment that [you] should be discharged for reasons other than a finding that [you were] determined to be unfit." You contend "Navy Regulations" require a command to initiate a Line of Duty investigation "when a U.S. Navy member is injured and the command becomes aware of that injury." Further, you contend that without a Line of Duty determination, there is a presumption the member was in the line of duty "regardless of their present status" but your command "ignored this fact and did not properly initiate a Medical Evaluation Board[4] to determine whether [you were] "unfit" for duty" which caused "further injury, depression, and anxiety, due to their inaction and negligence."

[1] The Board noted counsel's brief erroneously states "[t]he Applicant has not previously filed an application to this Board."
[2] The facts and circumstances of your service, as discussed in detail in the NR20220009062 Decision Document, remain substantially unchanged.
[3] The Board noted your submission does not indicate what "serious injuries" you had suffered.
[4] The Board noted Medical Evaluation Boards (MEBs) are not initiated by the command or the individual.

(2) The "elements of the Kurta Memo[5]" should be applied. Specifically, liberal consideration, quality of service, severity of misconduct, post-service conduct, and supporting evidence "should be given thorough and compassionate consideration."

(3) Although the Command was authorized to administratively separate you, the fundamental reason for the discharge was substantially deficient. You should have been referred to the MEB/Physical Evaluation Board, considered for the temporary disabled retirement list, or considered for a military retirement. The Command in this case did not have the proper authority to administratively separate [you] in this manner.

(4) Your discharge was unfair at the time and remains so now; procedurally and substantively defective; and inequitable and has served its purpose.

(5) You served your country honorably and would like your discharge upgraded.

(6) Since discharge, you have received treatment for your behavioral health issues.

The Board carefully reviewed your petition and the material you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of his/her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his/her disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. In particular, the Board observed you failed to provide evidence you had any unfitting condition within the meaning of the DES. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred. Further, with respect to your reliance on post-service findings[6] by the VA, the Board noted the VA does not make determinations as to fitness for service as contemplated within the service DES. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Lastly, the Board, noting your contention the Kurta and Wilkie memos apply to your situation but, as explained in the USD

[5] The Board noted each of these elements was specifically analyzed in counsel's brief.
[6] The Board noted you did not discuss the VA decision letters in counsel's brief but considered them as supporting evidence.

(P&R) memo provided to you for review/comment, concluded your claim of medical unfitness is a discreet issue and liberal consideration is not to be applied. Accordingly, given the totality of the circumstances, the Board determined 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/16/2025

[redacted]