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

[redacted]
Docket No. 8623-24
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 31 January 2025. 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 provided an opportunity to respond to the AO, you chose not to do so.

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 enlisted in the Marine Corps after a positive pre-accession urinalysis and commenced active duty on 26 June 2000. After a period of continuous Honorable service, during which you deployed in support of three operations, you immediately reenlisted on 2 October 2003 and

commenced a second period of active duty at the rank of Corporal/E-4. On 1 June 2004, you promoted to Sergeant/E-5.

On 16 August 2007, you pleaded guilty at Special Court Martial (SPCM) to wrongful use of cocaine. You were sentenced to reduction in rank to E-1, forfeitures, confinement, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 22 July 2008. You were issued a DD Form 214 that annotated your previous period of continuous Honorable service.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 16 November 2011, the NDRB granted partial relief to your request for a characterization of service upgrade based on their determination that your discharge was proper but not equitable. The NDRB further noted your PTSD diagnosis and stated: "While some mitigation is in order, the Applicant must be held accountable for his actions. Full relief to Honorable or General (Under Honorable Conditions) was not granted due to the seriousness of the misconduct and the rank of the Applicant." The NDRB directed you be issued a new DD Form 214; indicating your characterization of service as Under Other Than Honorable conditions (OTH).

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 change your discharge characterization of service and your contentions that you have 100% service-connected disability, need at least a General (Under Honorable Conditions) characterization of service to be issued a Defense Enrollment Eligibility Reporting System identification card (DEERS ID), and that you currently work at the Department of Veterans Affairs (VA) as an Emergency Manager. For purposes of clemency and equity consideration, the Board considered your statement, the VA decision letter, Certificate of Investigation, and VA letter regarding benefits.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 9 December 2024. The AO stated in pertinent part:

> Petitioner contends he incurred Post Traumatic Stress Injury (PTSD) and Traumatic Brain Injury (TBI) during military service, which may have contributed to the circumstances of his discharge.
>
> In November 2006, he was evaluated by a military psychologist following expressed suicidal ideation with a plan. The Petitioner reported multiple stressors, including marital conflict and trial separation from his spouse, chronic medical issues, and positive urinalysis for cocaine. "After the member bought the alcohol and sleeping pills he stated that he was driving…He stated that he no longer desired to commit suicide… He went to…[the] Emergency room and then was released on his own recognizance and to report here this morning." He was diagnosed with Adjustment Disorder with Disturbance of Emotions. One follow-up appointment was noted in the record. In June 2007, the Petitioner had a psychiatric evaluation

in the Substance Abuse Counseling Center (SACC) and was diagnosed with Alcohol Abuse. No further records were available regarding this visit. He was formally counseled regarding ineligibility for retention due to involvement with drugs on duty. In August 2007, he was convicted via special court martial of wrongful use of cocaine. In July 2008, he was discharged under other than honorable conditions.

Petitioner has received service connection for PTSD, effective July 2009. During his September 2009 Department of Veterans Affairs (VA) psychiatry evaluation, the Petitioner described mental health symptoms that onset upon "return from his 3rd combat deployment. He served in [redacted], [redacted], and [redacted]. Upon return home, he was also divorcing from his wife and states he felt, '…crushed and destroyed…' He turned to cocaine for a 3-4 month period as a means of self-medicating. He made a suicide attempt in 2006 by overdose on sleeping medication in combination with alcohol and was hospitalized…for 1 week."

During military service, the Petitioner was diagnosed with a mental health condition and an alcohol use disorder. Within a year of service, he received service connection for PTSD. It is possible that symptoms identified as adjustment difficulties in service were re-conceptualized as PTSD with the passage of time. There is insufficient evidence of TBI in available medical records.

There are some inconsistencies in the available service mental health records and the Petitioner's VA psychiatry evaluation that discusses his PTSD symptoms. Available service records indicate the Petitioner had a plan to suicide but was not ultimately hospitalized, as he denied intent during his emergency evaluation. Conversely, VA records, which also attribute his substance use to self-medication, indicate that he was hospitalized for a week due to suicidal ideation. These inconsistencies make it difficult to determine the reliability of the Petitioner's report.

Furthermore, it is difficult to attribute his misconduct solely to PTSD, given pre-service substance use behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition, other than alcohol or substance use disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined

that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board concurred with the AO and determined that, while there is in-service evidence of a mental health condition that may be attributed to military service and post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition, other than alcohol or substance use disorder. As explained in the AO, it is difficult to attribute your misconduct solely to PTSD in light of your preservice drug abuse. Finally, the Board believed the NDRB sufficiently addressed any injustice in your record with its upgrade of your characterization of service.

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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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.

With respect to your request for a separate DD214 for your first enlistment, the Board noted that your DD Form 214 documents your Continuous Honorable Active Service from 26 June 2000 to 25 June 2003. Additionally, BUPERSINST 1900.8 does not authorize the issuance of a separate DD Form 214 for your first period of service. Finally, the Board noted that it has no purview over the criteria used by DEERS to determine your eligibility for ID card issuance.

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,

2/26/2025

[redacted]