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

[redacted]
Docket No. 9189-24
Ref: Signature Date

[redacted]

Dear Petitioner:

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 1 May 2025. 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 and applicable statutes, regulations and policies, to include the Kurta Memo and the 4 April 2024 clarifying guidance from the USD (P&R) regarding cases involving both liberal consideration discharge relief requests and fitness determinations (Vazirani Memo) (collectively "the Clarifying Guidance"). The Board also reviewed the 4 February 2025 advisory opinion (AO) from a qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows you enlisted in the Navy and commenced active duty on 26 December 1996. On 12 April 1997, you reported for duty to [redacted] On 17 June 1997, you began a period of unauthorized absence (UA) which ended 35 days later when you were apprehended by civilian authorities on 22 July 1997. Thereafter, you received nonjudicial punishment for the 35-day UA and two instances of missing ship's movement. According to available medical records, on 20 August 1997, you received an approximately three-inch cut over your left eye when you accidentally ran into a ULV aircraft in the hangar. On 24 September 1997, you began another period of UA which ended, on 1 December 1997, when you were apprehended by civilian authorities. Upon your return from UA, you were placed in confinement and evaluated by a medical provider. Available records indicate the

medical provider stated you "need[ed] [a] medical board for discharge from USN." Thereafter, with the prospect of being charged under the Uniform Code of Military Justice for your UA, you consulted counsel. After you consulted with counsel, on 28 January 1998, you submitted a request for administrative discharge in lieu of trial by court-martial. In your request for discharge in lieu of trial by court-martial, you admitted guilt to your misconduct and indicated you did not desire to submit a statement on your behalf. On 29 January 1998, [redacted], approved your discharge under Other Than Honorable conditions in lieu of trial by court-martial. On 10 February 1998, you were so discharged and assigned an RE-4 reentry code.

In your petition, you request your discharge status be changed to "medical discharge." You contend you saw a physician after you suffered your head injury and the physician recommended you "see a medical board for discharge as [you were] not fit for duty." You further contend the Navy Brig and TPU personnel denied the physician's recommendation and charged you with a UA that you contend was "due to [your] head injury and the way personnel handled [your] care afterwards." In support of your requested relief and for the purpose of clemency and equity consideration, you submitted various documents from your official military personnel file and medical record, a picture of your bandaged head, the statement you provided to the Department of Veterans Affairs (VA) dated 9 September 2024, and, on 9 October 2024, you added your recent VA decision letter for consideration by the Board.

In order to assist in reviewing your petition, the Board considered the AO. The AO stated in pertinent part:

> Petitioner was properly referred for evaluation and diagnosed with PTSD during military service. Unfortunately, it is not possible to attribute his misconduct solely to avoidance following PTSD symptoms, given his history of UA prior to the head injury. While it is possible that his propensity to UA may have been exacerbated by PTSD symptoms, there is insufficient evidence to attribute his misconduct solely to PTSD or TBI.

The AO concluded, "it is my clinical opinion that there is in-service and post-service evidence from the VA of diagnoses of PTSD and head injury that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or TBI."

The Board carefully reviewed your petition and the material you provided in support of your petition and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. As set forth in the Vazirani Memo, the Board first applied liberal consideration to your assertion that your mental health condition potentially contributed to the circumstances resulting in your discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to your mental health condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

Thus, the Board began its analysis by examining whether your mental health condition actually excused or mitigated your discharge. On this point, the Board observed that you had, in fact, been diagnosed with PTSD, as described more fully in the AO. However, consistent with the finding of the AO, the Board determined there was insufficient evidence your misconduct could be attributed to your PTSD or to TBI. In fact, the Board observed that you had commenced periods of UA both before and after your head injury. The Board further noted you had legal counsel assist you when charged for your latter period of UA and, with assistance of legal counsel, you submitted your request for discharge in lieu of trial by court-martial. In light of this, the Board was unable to find an error or an injustice in your discharge.

With respect to the next step of review under the Vazirani Memo consisting of the Board's analysis of your request for a service disability retirement, the Board determined there was insufficient evidence demonstrating an error or injustice in your misconduct-based discharge vice processing within the Disability Evaluation System (DES). First, as noted, the Board observed you had legal counsel assisting you at the time of your discharge and did not find any evidence to support a finding that you raised any issues relating to your mental health condition in the processing of your legal case. Second, the Board noted that even assuming, for the sake of argument, you were directed to the DES, your misconduct case would have taken precedence over your disability processing.

The Board further considered that, to the extent you rely upon post-service findings by the VA, 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.

In conclusion, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, the Board did not observe any error or injustice in your naval records. 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.

Sincerely,

[redacted]