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

[redacted]
Docket No. 9201-24
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.

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 March 2025, has carefully examined your current request. 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 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board for a discharge upgrade. On 16 January 2008, this Board denied your initial petition for relief. On 29 June 2015, this Board again denied you any relief. On 23 November 2022, this Board denied your petition for relief for a third time. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) while you accept full responsibility for your behavior, you posit that your chain of command erred in its discretion when they decided to discharge you with an OTH, (b) you were clearly struggling with abusing alcohol and your chain of command knew of your struggles, (c) other than verbal warnings you did not receive the help or treatment you needed to overcome your addiction, (d) your recommended treatment in 1988 should have been made mandatory, (e) your chain of command failed to provide with the help you needed and watched you continue to struggle with your addiction, (f) your chain of command committed a discretionary error when they decided to administratively separate you rather than give you access to treatment that would have helped you abstain from alcohol abuse and likely would have saved your Navy career, (g) you were in the beginning stages of a promising Navy career but were not able to flourish when your chain of command made a material error in ignoring the clear signs of your struggle with alcoholism and discharged you rather than provide you with access to regular treatment to help you overcome your abuse problems, and (h) new evidence clearly shows your undiagnosed mental health conditions and the significant steps you have taken towards rehabilitation and professional success. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 3 February 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

> In March 1988, the Petitioner denied having an alcohol problem, but was sent for an evaluation following an incident in which he was drunk and disorderly. He was identified as an alcohol abuser and recommended for Antabuse treatment.
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> In April 1988, he received NJP for drunk and disorderly. He was recommended for level II outpatient alcohol treatment, although he continued to deny having an alcohol problem.
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> In May 1988, the Petitioner was evaluated and diagnosed with Alcohol Abuse with apparent dependency. He was recommended for Level III inpatient treatment and began Antabuse treatment.
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> In June 1988, he received NJP for drunk and disorderly by urinating in berthing. In October 1988, he received medical evaluation and treatment for "mild alcohol intoxication."
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> In January 1989, he received NJP for UA and incapacitated for duty. He was re-evaluated and remained diagnosed as Alcohol Dependent.
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> Petitioner provided a February 2024 mental health evaluation by a social worker expressing the opinion that, "While serving in the US Navy…[the Petitioner] was undiagnosed with Major Depression and Anxiety Disorder. He…reports using alcohol to self medicate in order to cope with his depression and anxiety…It is my

> professional opinion that his undiagnosed mental illness was the cause of his behavior that lead [*sic*] to his separation from the Navy."
>
> Petitioner was appropriately referred for evaluation during his enlistment and properly evaluated on multiple occasions. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. There is no evidence of another mental health condition in service. Temporally remote to his military service, a civilian provider has expressed the opinion that his problematic alcohol use and subsequent misconduct were due to self-medication of other mental health concerns. However, more weight has been placed on in-service records over the Petitioner's post-service recall of events.

The AO concluded, "it is my clinical opinion that there is some post-service evidence from a civilian provider of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, 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. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions other than an alcohol use disorder, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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

The Board was again troubled inconsistency of your contentions; i.e. that you state you apologize and accept full responsibility for your behavior but seem to squarely put the blame on your command for your ultimate separation and suggest the command somehow erred in the way they handled your situation. The Board disagreed with your contention that your command made any procedural and/or discretionary errors in the handling and discharge processing of your case. The Board determined that your administrative separation for a pattern of misconduct was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for

your actions. The Board also observed that you declined to the Navy's attempt to provide you with inpatient alcohol rehabilitation treatment with the Department of Veterans Affairs prior to your separation.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under Other Than Honorable (OTH) conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Finally, the Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command.

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, 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.

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,

3/31/2025

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