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

[redacted]
Docket No. 10634-24
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 11 April 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 the 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You previously applied to this Board on two occasions and were denied on 9 August 2005 and 30 June 2023. In your first application, you contended that your post-service character and behavior merited consideration of an upgraded discharge on the basis of clemency factors. In your second application, you reapplied to the Board seeking reconsideration of your original contentions of clemency with respect to your post-service conduct and accomplishments, to include new evidence that you had obtained your license in clinical social work, had successfully served as a federal government employee with the Department of Veterans Affairs (VA) for over 25 years, had earned multiple service recognition letters, and had received frequent communications and detailed letters of appreciation from numerous VA beneficiaries whom you served from 2006 through 2010. You also resubmitted four character letters which had been

considered as part of the Board's previous denial but which were reconsidered in light of the guidance in the Wilke Memo. In addition to your clemency contentions, you also based your claim for relief in part upon the contention that your alcohol consumption and related drug abuse may have been due, in part, to suffering from mental health issues. However, although you submitted evidence of the VA determination of your service-connected disability for unspecified Depressive Disorder with unspecified Anxiety Disorder, you provided no medical evidence to elaborate upon that claim or to establish a potential nexus with your drug abuse misconduct. As a result, the AO's clinical opinion found insufficient evidence of a mental health condition that might be attributable to military service and insufficient evidence that your misconduct might have been attributable to a mental health condition. The Board's review of your record resulted in a split vote regarding the weight of your clemency matters. In reviewing the sufficiency of your clemency matters, the Assistant General Counsel to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) concurred with the Minority conclusion that your record of favorable factors was insufficient to outweigh the seriousness of your admitted choice to use illegal drugs, especially in light of your lengthy record of military service prior to your drug abuse.

The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

In your current request, again reconsidering your mental health and clemency contentions, 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, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your final discharge to Honorable and your continued contentions that you were suffering from undiagnosed mental health and medical issues at the time of your drug abuse misconduct. You state that you were unaware of, and did not understand, the changes that were taking place in your body and mind at the time of your misconduct, which you believe led to your poor decision making. In support of your application and for clemency and equity consideration, you submitted evidence in the form of two detailed medical opinions, to include the analysis provided by the examiner in your VA Disability Benefits Questionnaire (DBQ) addressing the relationship between your heart condition, which you contend to have begun experiencing during your active duty service, and symptoms and behaviors of depression. In addition to those medical opinions, you submitted medical records and a statement regarding the medical documentation which was missing from your most recent, previous application.

Because you contend that a mental health condition affected your discharge, the Board also considered a new AO, which reviewed the additional medical evidence you submitted. The AO stated in pertinent part:

> Petitioner entered active duty in the US Navy in June 1974, acknowledging pre-service marijuana use.
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> In December 1988, he re-enlisted after 14 years of honorable service. He denied mental health symptoms during his re-enlistment physical.
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> In January 1989, he received non-judicial punishment (NJP) for wrongful use of marijuana. He denied problematic substance use or a desire for treatment upon

evaluation. He reported that his "relatives and friends had a big party set up for me. I saw what was going on and I was determined not to get involved. Things went on and I had a couple of drinks and smoked it…This is not the only time I used marijuana. I used marijuana before I joined the military."

In May 1989, he was discharged under honorable conditions.

Petitioner submitted January 2020 letters from a civilian physician noting service connection for Depressive Disorder and Unspecified Anxiety, and expressing the opinion that other, medical concerns may be related to his mental health diagnoses. The letters cited mental health records from August 2008 to July 2015 noting evaluation and treatment for mental health symptoms.

Petitioner also provided a July 2015 VA mental health evaluation listing a diagnosis of Depressive Disorder Due to Another Medical Condition with Depressed Features. The report noted symptoms that dated back to a July 2010 claim of "near-continuous depression and anxiety symptomatology [that] were not present prior to his military service."

He presented evidence of treatment for additional medical concerns from April to October 2014. Previously submitted VA records cited mental health treatment since 1992 and the Petitioner's report of a suicide attempt in 1991.

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. Temporally remote to his military service, the VA has granted service connection for mental health symptoms. Although it is possible to consider marijuana use as a behavioral indicator of self-medication of mental health concerns, it is difficult to attribute his misconduct solely to a mental health condition, given his in-service report of his substance use.

The AO concluded, "There is post-service evidence from the VA of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to mental health concerns.

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 NJP, 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered that you were assigned a General (Under Honorable Conditions) characterization of service for misconduct that normally warrants an Other Than Honorable discharge. Therefore, the Board determined you already received a large measure of clemency. Further, the Board concurred with the AO that, although there is post-service evidence from the VA of mental

health concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to mental health concerns. Specifically, the Board gave greater weight to your in-service statement regarding the circumstances surrounding your drug-abuse misconduct; specifically, that you were home with friends and family at a party and smoked marijuana after having several drinks. 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. Finally, the Board took into consideration that your drug abuse misconduct was committed after more than 14 years of service and with full knowledge as a senior first class petty officer of the Navy's zero tolerance policy for drug use.

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 the 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 is attached 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,

5/1/2025

[redacted]

Executive Director

Signed by: [redacted]