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

[redacted]
Docket No. 11008-24
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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 18 April 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 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 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 enlisted in the Marine Corps and began a period of active duty on 10 July 2002. You were awarded the Combat Action Ribbon (CAR), for the period of 21 – 23 April 2003, for your service while deployed in support of [redacted] from March 2003 through July 2003. You redeployed to [redacted] in support of [redacted] between August 2004 and March 2005.

On 24 February 2004, you received your first nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86 and 91, respectively, for an unauthorized absence (UA) from physical fitness training and for being verbally disrespectful and insubordinate toward the Sergeant of the Guard. On 19 May 2004, you received your second NJP for three specifications of violation of Article 86 of the UCMJ due to UAs of one day, three

days, and seven days. Following the NJP, you were issued administrative counseling warning you that further misconduct could result in administrative separation. On 30 June 2004, you were again counseled by advising you to correct deficiencies with respect to your poor decision-making, lack of judgment, conducting yourself in an insubordinate manner towards a staff noncommissioned officer, and not completing assigned extra duties.

During your second OIF deployment, you received a third NJP for violation of Article 128 of the UCMJ by knowingly assaulting a senior noncommissioned officer. You wrongfully held the legs of a corporal while another Marine punched him. Incident to your transfer to a garrison command, a review of your service record book noted your history of misconduct, and on 1 December 2005, you were advised that any future misconduct, regardless of how minor, would result in appropriate judicial or adverse administrative action, include but not limited to administrative separation. On 7 March 2006, you were not recommended for promotion due to "recent involvement with selling unauthorized material." On 25 May 2006, you were additionally counseled that you were not eligible for reenlistment due to your pattern of misconduct and would be issued an "RE-3C" reentry code. However, you continued serving through the duration of your enlistment contract and you were discharged, on 9 July 2006, upon the completion of your required active service. At that time, your average proficiency and conduct marks issued during your enlistment were both below 4.0 and, therefore, you were discharged under honorable conditions (GEN).

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 discharge and your contentions that you have been diagnosed with post-traumatic stress disorder (PTSD), did not understand your anger issues during your time in service, were too prideful to know you needed help, did not want to look weak, and tried to suppress your feelings. In support of your contentions and for the purpose of clemency and equity consideration, you submitted evidence from the Department of Veterans Affairs (VA) of your service-connected disability rating for PTSD in addition to a detailed personal statement describing your experience of traumatic events due to combat exposure; consistent with your receipt of the CAR award.

Because you based your claim for relieve primarily on your contentions that you experienced post-traumatic stress disorder (PTSD) or another mental health condition which you believe may have mitigated the circumstances of your misconduct, the Board also considered the AO. The AO stated in pertinent part:

> 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 PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., in-service or 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, "There is post service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and multiple administrative counseling, outweighed the mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your GEN 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. Additionally, the Board concurred with the AO with respect to the insufficiency of the mental health evidence in support of your contentions regarding the nexus between your post-service diagnosis of PTSD and your in-service misconduct. As explained in the AO, your post-discharge diagnosis is temporally remote to your service and insufficient to establish a nexus with your misconduct. 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 found that you were already granted significant clemency with respect to the mitigating factor of your traumatic combat exposure by being permitted to continue serving through the completion of your obligated 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, 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.

Sincerely,

5/7/2025

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