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

[redacted]
Docket No. 11029-24
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 18 July 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

You enlisted in the U.S. Navy and began a period of active duty service on 24 April 1989. Your pre-enlistment physical examination, on 15 March 1989, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. On 16 September 1990, you reported for duty on board the [redacted].

On 24 August 1989, you received non-judicial punishment (NJP) for failing to obey an order/regulation and communicating a threat. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge now or in the future.

On 11 July 1990, you received NJP for: (a) dereliction in the performance of duties, and (b) wrongfully impeding a Naval Investigative Service Investigation. A portion of your punishment was suspended. On 2 October 1990, the suspended portion of your July 1990 NJP was vacated and ordered executed due to continuing misconduct.

On 2 October 1990, you received NJP for insubordinate conduct and for misbehavior of a sentinel when you were found sleeping on post. You did not appeal your NJP. On 9 October 1990, your command issued you a Page 13 documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative discharge.

On 2 January 1991, you received NJP for: (a) four (4) separate specifications of unauthorized absence (UA), (b) failing to obey a lawful order/regulation, and (c) a breach of the peace. You did not appeal your NJP. On 4 January 1991, your command issued you a Page 13 documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative discharge.

On 23 April 1991, you received NJP for both UA and insubordinate conduct. You appealed your NJP but the appeal was denied by higher authority on 21 June 1991.

On 24 April 1991, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You consulted with counsel and elected to request a hearing before an administrative separation board (Adsep Board).

On 25 June 1991, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel and testified on your own behalf. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you committed misconduct and that you should be separated with a General (Under Honorable Conditions) ("GEN") discharge characterization. Your defense counsel did not submit a post-board letter of deficiencies.

In the interim, on 16 July 1991, the California Highway Patrol arrested you for driving under the influence (DUI). On 26 July 1991, you received NJP for failing to obey a lawful general order/regulation (U.S. Navy Regulations Article 1162). You did not appeal your NJP.

On 8 August 1991, your Commanding Officer (CO) disagreed with the Adsep Board findings and recommended to the Separation Authority (SA) that you receive an under Other Than

Honorable conditions (OTH) characterization of service. Ultimately, on 6 September 1991, you were separated from the Navy for misconduct with a GEN discharge characterization and were assigned an RE-4 reentry code.

On 5 September 2019, the Department of Veterans Affairs (VA) increased your disability rating for schizoaffective disorder (claimed as mental health/chronic depression) from 20% to 100%; effective 30 May 2019.

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 for a discharge upgrade and change to your reason for separation. You contend that: (a) your GEN discharge reflects multiple injustices, (b) while serving as an electrician's mate and cook, you began to experience symptoms of schizoaffective disorder as well as PTSD and depression, (c) your schizoaffective disorder and other mental health conditions, undiagnosed by military medical personnel at the time, began to affect your service and led to incidents of misconduct including UAs, disrespect, and failure to obey orders, (d) in addition, you experienced numerous instances of severe bullying and traumatic hazing by other Navy personnel that exacerbated your mental health and further affected your state of mind and actions, (e) despite seeking help from the Navy numerous times for your issues, including suicide attempts, you were not provided with the legitimate psychiatric assistance or stabilization you needed, (f) you were instead discharged with a GEN discharge characterization for a pattern of misconduct, (g) post-service you were formally diagnosed with schizoaffective disorder, PTSD, and major depressive disorder, (h) you have been service-connected by the VA for your schizoaffective disorder at 100% disabling, (i) you are is entitled to an upgrade since you meet the upgrade criteria established by federal law and the Kurta Memo, which govern discharges based on conduct secondary to mental health conditions, including your schizoaffective disorder, (j) your petition should be granted because your commanders would not have discharged you, or would have opted for a less prejudicial discharge, if applying today's standards, and (k) your petition should be granted because the Wilkie Memo instructs the Board to consider clemency for those in your situation. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO on 20 March 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

> There is evidence that the Petitioner exhibited mental health symptoms while in service. The Petitioner claims that he suffered from PTSD and Schizoaffective Disorder while in service which may have mitigated his misconduct. There is no evidence that the Petitioner exhibited symptoms consistent with the full criteria for a diagnosis of Schizoaffective Disorder, which is a combination of affective (mood) and psychotic symptoms. It is apparent that he exhibited symptoms of depression and anxiety; however, the closest mention of any psychotic symptoms would be his diagnosis of Character Disorder, Schizoid and Immature Personality – specifically the mention of "Schizoid." Even so, "Schizoid" is more akin to an odd display of

> personality and behavior and does not necessarily mean that psychotic symptoms are present. Furthermore, review of several hundred pages of post-service VA records do reflect a diagnosis of Schizoaffective Disorder, however there is no apparent intake contained therein which would describe the symptoms, rationale for, and etiology of the given diagnosis. Although the diagnosis is present in his VA records, none of his notes reflects any evidence of psychosis.
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> There is no evidence of PTSD as contained within his service record. His description of events that he believed caused symptoms of PTSD do not meet full criteria for PTSD as per DSM-V-TR guidelines. Again, his VA records contain the diagnosis, but no explanation for the given diagnosis. Although the Petitioner's misconduct preceded diagnosis of mental health conditions/symptoms in service, it is possible that he could have been experiencing symptoms of depression and anxiety during periods where he engaged in misconduct, and that he did not seek help until after he got into trouble. Periods of UA and smaller infractions of failure to obey lawful orders and/or less serious infractions of insubordinate conduct could potentially be mitigated by depression and anxiety; however, more serious infractions such as impeding a formal investigation, communicating a threat, and breach of peace are unlikely to have been caused by mental health symptoms/conditions.

The Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of mental health conditions (depression/anxiety) that existed in service. There is insufficient evidence to attribute *all* of his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their AO.

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 all of your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated all of the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, 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 while on active duty you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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 GEN or 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 found that you already received a large measure of clemency when the separation authority assigned you a GEN characterization of service despite your extensive record of misconduct that would normally warrant an OTH. 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. As explained in your CO's endorsement to your administrative separation, 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 cumulative misconduct and disregard for good order in 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.

Sincerely,

7/23/2025

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