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

[redacted]
Docket No. 11475-24
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 16 May 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 16 February 1993. Your pre-enlistment physical examination, on 5 January 1993, and self-reported medical history both noted no psychiatric or neurologic symptoms, conditions or issues. As part of your enlistment application, on your self-reported medical history you expressly denied and/or answered in the negative for ever having an operation/surgery.

On 26 February 1993, a Medical Dispositions Officer (MDO) determined that you had a physical

condition that existed prior to your enlistment that was disqualifying for active duty service. The MDO concluded that your condition was disqualifying for active duty service and would have been disqualifying at MEPS had all the facts been known at the time of your enlistment physical examination. You provided a voluntary statement during your MDO interview. You disclosed, in pertinent part:

> In Aug of 1989, I crashed into a car and broke my leg, dislocated my knee, and hurt the lower part of my back. I was sent to the hospital and was operated on. I was put into a body case for seven to eight weeks. The reason I had the body case on was so that my screws could settle in my leg and to be kept stable. I was told by my doctor not to play sports or any athletic activity. When I went to sign up for the Marines, I knew that I didn't tell my recruiter at MEPS because my father's side of the family said they would disown me if I didn't become a Marine. And then I signed and came to [redacted] and found out my leg can't take the training. The 3 screws had never been removed, and I didn't tell anyone that they were in there.

Following your MDO evaluation and interview, your command notified you that you were being processed for an administrative discharge by reason of defective enlistment and induction due to fraudulent entry as evidenced by the non-disclosure of a physical condition that existed prior to entry into the Marine Corps. On 9 March 1993, your commanding officer recommended that you receive an uncharacterized entry level separation (ELS) due to your fraudulent entry. On 9 the same day, the Separation Authority (SA) approved and directed your ELS. Ultimately, on 11 March 1993, you were separated from the Marine Corps for a fraudulent enlistment with an uncharacterized ELS discharge and were assigned an RE-3P reentry code.

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 change to your reason for separation. You contend that: (a) a fraudulent enlistment should not be on your documentation because you did not fraudulently enlist, (b) you passed through the recruiting office and MEPS without any concerns, (c) due to the interactions with the "higher ups" in training they found an easy way to give you an ELS that didn't require any kind of administrative review. For purposes of clemency and equity consideration, the Board considered the totality of the documentation 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 27 March 2025. As part of the Board's review, the Board 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, he has received a diagnosis of PTSD attributed to military service by a civilian provider. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his separation, which was attributed to his failure to fully disclose his pre-service

medical history during the enlistment process, and which he acknowledged during his service.

The Ph.D. concluded, "There is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation from service to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, 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, based upon its review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board also concluded that your discharge from the Marine Corps was in no way related to any mental health concerns. The Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy contained no known errors. Based on your precise factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified in separating you for a fraudulent enlistment.

The Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Marine's eligibility for enlistment. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined the record clearly reflected that your concealment of certain material facts regarding your medical history and injuries due to your car accident was willful and intentional and demonstrated you were unfit for further Marine Corps service. The Board concluded that had you properly and fully disclosed your pre-service medical history, you would likely have been disqualified from enlisting in the Marine Corps. 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 otherwise be held accountable for your actions.

Additionally, the Board noted that separations initiated within the first 180 days of continuous active duty will generally be described as ELS except when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case.

Further, the Board did not find a material error or injustice with your RE-3P reentry code. The Board noted that the RE-3P reentry code directly corresponds to: "failure to meet physical/medical standards," and was an appropriate and permitted designation given the totality of the circumstances in your case. The Board further noted that the RE-3P reentry code may not prohibit reenlistment, but requires that a waiver be obtained, and that recruiting personnel are responsible for determining whether you meet the standards for reenlistment and whether or not a request for a waiver of the reentry code is feasible. Accordingly, the Board concluded you were assigned the correct reentry code based on the totality of your circumstances, and that such

reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of your discharge.

Finally, the Board also disagreed with your contention that you were ultimately discharged on or about 2 June 1993. The Board noted that the SA approved your ELS on 9 March 1993 and directed you to be discharged on 11 March 1993, the very same discharge date as reflected in block 12b of your DD Form 214. The Board concluded that you did not proffer any convincing evidence that your discharge date was any date other than what was already reflected on your DD Form 214.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your intentional failure to disclose your complete medical history clearly merited your ELS 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. 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,

5/23/2025

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