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

[redacted]
Docket No. 0117-25
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 June 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Marine Corps Reserves and commenced a period of active duty on 25 March 2002. You were honorably discharged, following completion of your required active service, on 8 September 2002. You commenced a second period of active duty, on 14 January 2003, and were honorably discharged on 16 August 2003. You then affiliated with the Selected Marine Corps Ready Reserve.

On 12 June 2004, your Commanding Officer (CO) sent you a letter regarding your unsatisfactory participation in the reserves. The letter stated you had been declared a deserter due to 39 unexcused absences from drill. Between 5 February 2005 and 7 August 2005, your Official Military Personnel File (OMPF) documents six attempts by your command to contact you without success. Consequently, on 1 November 2005, the command attempted to notify you of

intended administrative separation processing for missing nine or more drills. Because you also did not respond to this notification, on 3 January 2005, your CO signed a document indicating you had not returned acknowledgment of the notification within the time allowed and your administrative separation continued. On 8 March 2006, the Staff Judge Advocate conducted a legal review of your administrative separation and found it to be sufficient in law and fact. On 1 June 2006, the Commanding General directed your discharge from the reserves for unsatisfactory performance with an Under Other Than Honorable (OTH) Conditions and you were so discharged.

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 Memo. These included, but were not limited to, your desire to upgrade your discharge characterization of service and your contentions that you served honorably on a combat deployment in Iraq in 2003, your discharge from the Reserves should reflect your prior Honorable service; after Iraq you suffered from PTSD, you were being treated by the Department of Veterans Affairs at that time, you were not drilling as a reservist; and you would have continued coming to drills had you not been suffering from PTSD. 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.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 17 April 2025. The AO noted in pertinent part:

> There is no evidence that the Petitioner suffered from a mental health condition or that he exhibited any symptoms of a mental health condition while in military service. The Petitioner submitted post-service evidence of PTSD and treatment thereof from 2005 to 2007. It is unclear why he stopped participating in his reserve duty. His record notes that multiple attempts were made by his Command to contact Petitioner and Petitioner failed to respond. There is one VA note that quotes Petitioner has having said, "I don't want anything to do with them," in referring to his Command and no longer participating in drills. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a diagnosis of PTSD that is linked to his service. There is insufficient evidence to attribute his misconduct (unsatisfactory participation in drills) to PTSD."

In response to the AO, you submitted additional supporting documentation that provided clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that consistent unsatisfactory participation

in the reserves, as evidenced by your documented 39 missed drills, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated absence had on the good order and discipline of your command. The Board also found that your conduct showed a complete disregard for military authority and regulations. The Board also noted the numerous attempts by your command to contact you prior to initiating separation proceedings without any response on your part. The Board opined, even if for some extraordinary reason the contact attempts failed to reach you, as a Marine with two prior successful periods of service, surely would have known of your responsibility to make proactive contact with your command to inform them you were unable to attend drills for medical, or any other reasons. Additionally, the Board concurred with the AO and determined that, although there is sufficient evidence of a diagnosis of PTSD linked to your service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, there is no evidence that you suffered from a mental health condition or exhibited any symptoms of a mental health condition while in the military service. Further, the Board considered that your VA documents quote you has having said, "I don't want anything to do with them," in reference to your command and drills. 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. Moreover, 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 serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

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.

Sincerely,

6/27/2025

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