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

[redacted]
Docket No. 1637-25
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.

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, considered your application on 4 August 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 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) furnished by a qualified mental health professional and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You previously applied to this Board on two occasions for an upgrade to your characterization of service. In your first application, you contended that your discharge was unjust because your misconduct was mitigated by PTSD. You provided a statement where you contended negligence by your defense counsel, pointed out that you paid the victim's family civilian damages, and that

you were extorted by the judge in your murder trial. The Board denied your request on 12 April 2016. In your second application, you provided psychiatric notes and a letter from a psychiatrist indicating you had been diagnosed with PTSD and other mental health conditions. The Board denied your request on 15 July 2016.

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 to change your discharge characterization of service and your contentions that you were incarcerated in the Philippines for a crime you did not commit, given a Bad Conduct Discharge because you were absent without leave, "acquitted after twenty-two long, painful, abusive, traumatizing months in jail," and your confinement led to intense difficulty adapting to society. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, your statement, a psychiatrist's letter, and the court document you provided.

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 June 2025. The AO stated in pertinent part:

> Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other mental health concerns during military service, which may have contributed to the circumstances of his separation from service.
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> Petitioner entered a period of active duty in the US Navy in August 1977.
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> a. In September 1977, he received non-judicial punishment (NJP) for eleven hours of unauthorized absence (UA) from his place of duty.
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> b. In March 1978, he sought a mental health evaluation in the context of preparing to go "on trial for murder. He gives a convincing story for committing the crime while severely intoxicated and in a partial blackout. He has a long history of alcohol related incidents…[and] had a history of dissociated episodes under stress." He was diagnosed with Dissociative Episodes and Habitual Excessive Drinking.
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> c. In February 1979, he was notified of a civilian court hearing for the charge of homicide. In August 1979, he was acquitted of the charge of homicide, as there was insufficient evidence of his guilt after his confession was deemed inadmissible due to coercion.
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> d. From September 1979 to February 1982, the Petitioner was on unauthorized absence (UA). In April 1982, he was convicted via special court martial (SPCM) of 825 days of UA and received a Bad Conduct Discharge (BCD).
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> Petitioner contended he was falsely imprisoned in the [redacted] for a crime of which he was later acquitted, but which contributed to his UA and discharge. He claimed that he incurred torture during the incarceration that contributed to mental

health concerns. He provided a June 2024 letter from Department of Veterans Affairs (VA) clinician stating that the Petitioner "has received treatment through the specialized Military Trauma Treatment Program (MTTP) due to a diagnosis of Posttraumatic Stress Disorder, chronic, with dissociative symptoms, depersonalization; Major Depression, recurrent, in partial remission; and Dysthymic disorder.

During military service, the Petitioner was evaluated and received no formal mental health diagnosis, although a history of dissociative episodes and problematic drinking were endorsed.

It is noteworthy that the Petitioner's dissociative episodes were described in the context of a pending criminal trial and that the Petitioner currently denies having engaged in the criminal behavior. There are inconsistencies in the record that raise doubt regarding his candor or the reliability of his recall. Throughout his military processing, there was no evidence of a mental health condition requiring referral for treatment. Temporally remote to his military service, VA clinicians have diagnosed PTSD and other mental health concerns that are attributed to military service. There is insufficient evidence of TBI. Although it is possible that the Petitioner may have sought to avoid military service following his release from incarceration, it is difficult to establish a nexus with his misconduct, particularly given the extended, chronic nature of his UA and UA that occurred prior to the incident resulting in incarceration.

The AO concluded, "There is post-service evidence from VA clinicians of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence of TBI. There is insufficient evidence that his misconduct may be attributed to mental health concerns incurred during military service."

In response to the AO, you provided additional evidence in support of your application. 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 your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined there is insufficient evidence of TBI or that your misconduct may be attributed to mental health concerns incurred during military service. The Board agreed that there are inconsistencies in the record that raise doubt regarding your candor or the reliability of your recall in this matter. 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,

8/20/2025

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