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

[redacted]
Docket No. 1866-25
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.

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 5 September 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 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) of a qualified mental health provider and your response to the AO.

You previously applied to the Board contending that your cocaine use was an isolated incident. Your request was considered on 19 February 2020 and denied. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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 change your reason for separation. You contend that you were brutally attacked by unknown assailants, on 31 July 1987, which resulted in injuries and head trauma that was not adequately

treated and also caused psychological trauma. You have since been diagnosed with traumatic brain injury (TBI) and with other Specified Trauma and Stressor-related Disorder due to this in-service experience. You specifically state that you were beaten by a mob with wrenches, baseball bats, and other blunt objects; to include being struck in the head with a pipe wrench. You allege that you were not able to receive follow up medical care and resorted to use of "alternative substances" to self-medicate your injuries and escape reminders of the attack. You believe that your punishment was too harsh in consideration of additional clemency factors of your youth, inexperience, and your lack of understanding how your TBI would affect your behavior if left untreated. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, your counsel's brief, your personal statement, service health records, a psychological evaluation report, Department of Veterans Affairs (VA) records of your TBI and disability rating decision, and four character letters.

Because you contend that post-traumatic stress disorder (PTSD), TBI, or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

> There is evidence that the Petitioner incurred a head injury in service. Temporally remote to his military service, the VA has granted service connection for head trauma. Petitioner was evaluated during military service for substance use disorder, and he denied symptoms of substance use disorder and did not report mental health symptoms. Temporally remote to his military service, a civilian psychologist has determined that his in-service substance use may have been self-medication of mental health symptoms in service. There are some inconsistencies in his current report and his service record that raise doubt regarding his candor or the reliability of his recall with the passage of time. The Petitioner claims that his cocaine use was a one-time event, but his service medical record notes that he reported three months of cocaine use in response to his relationship troubles. While it is possible to consider UA and substance use behavioral indicators of mental health concerns in service, it is difficult to make that attribution. There is no indication that his UA was related to mental health concerns, and he did not report the UA in his psychological evaluation.

The AO concluded, "There is in-service evidence and post-service evidence from the VA of head trauma that may be attributed to military service. There is post-service evidence from a civilian psychologist of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be solely attributed to TBI or a mental health condition."

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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders

such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also found that your conduct showed a complete disregard for military authority and regulations. Moreover, contrary to your contention, the Board determined your punishment and administrative separation were supported by your drug abuse and appropriate. Therefore, after the application of the standards and principles contained in the Wilkie Memo, the Board found that your service fell well below the minimum standards for a General (Under Honorable Conditions) or Honorable characterization of service.

Further, the Board applied liberal consideration to your claim that you suffered from a mental health condition and TBI, and to the effect that these conditions may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition and TBI that may be attributed to military service. This conclusion is supported by the AO and the medical evidence you provided. However, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by either TBI or a mental health condition. In this regard, the Board agreed with the AO that it is difficult to attribute your drug abuse to a mental health condition based on the inconsistencies in your record and the temporally remote nature of your medical evidence. The Board also reached the same conclusion regarding your TBI condition after determining it simply had insufficient information available upon which to make such a conclusion. 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.

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,

9/29/2025

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