DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[redacted]
Docket No. 2354-25
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 March 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 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.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Marine Corps Reserve and began a period of active duty on 10 February 1969. Your enlisted service included combat operations in the [redacted] after which you continued serving, reenlisted, and were ultimately appointed as a commissioned officer, via an enlisted commissioning program, on 27 March 1975.

2. On 5 January 1983, while serving in the grade of captain/O-3, you were augmented onto regular active duty. As a result, you were discharged from active duty to immediately accept a

regular commission. Thus, you have honorable service from 10 February 1969 through 5 January 1983 for which you received multiple discharge certificates.

3. After your second non-selection for permanent promotion to the grade of major/O-4, you were officially retained on active duty until retirement eligible. However, on 28 September 1988, you murdered the brother of your sister-in-law's husband by tying him up and cutting his throat. You then attempted to murder your brother-in-law by confronting him with a gun, cutting his neck with a knife, and biting his right ear. The following day, you surrendered to civil authorities and were placed into confinement pending trial by civil authorities.

4. While pending trial, you were advised that you would be required to show cause for your retention in the Marine Corps based on your misconduct. You requested a hearing before a Board of Inquiry (BOI) and it convened on 25 January 1989. The BOI unanimously found that you failed to establish that you should be retained on active duty and should be discharged with an Other Than Honorable (OTH) characterization of service.

5. On 26 April 1989, Director, U.S. Marine Corps Personnel Management Division, forwarded a Memorandum to the Secretary of the Navy for decision on the BOI recommendation. On 10 June 1989, Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN M&RA) approved your discharge.

6. The final administrative actions to implement your discharge appear to have been delayed due to your incarceration. On 1 August 1989, Commandant of the Marine Corps directed that you be issued a Certificate of Release or Discharge from Active Duty effective 11 August 1989. This message specified to use a separation code of "JFF3" with a narrative reason for separation of "revocation of appointment." This message further specified that you were not entitled to involuntary separation pay. As a result, you were discharged on 11 August 1989. At the time of your discharge, block 29 documented 317 days of lost time due to your incarceration by civilian authorities, which was deducted from your net active service. As a result, your discharge record documented that you accrued 5 years, 8 months, and 19 days of active duty service following your regular commission in addition to 13 years, 6 months, and 22 days served prior to your regular commission. This totaled a period of net active duty of approximately 19 years and 6 months.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

1. You experienced symptoms of undiagnosed post-traumatic stress disorder (PTSD) at the time of your misconduct, which you attribute in part to your combat service in [redacted] but primarily to your former spouse's infidelity and your resulting fear that you might have contracted a sexually transmitted infection.

2. You served honorably "for 20 years" prior to your discharge and, in the more than 30 years since, have taken active steps toward volunteering within his prison community, to include mentoring and educating his inmate peers in addition to your own educational pursuits.

3. You do not feel you were worthy of requesting consideration of an upgraded characterization while you were still incarcerated. You have now been released after serving more than 30 years of your sentence and have even completed your parole now.

4. You receive mental health care from the Department of Veterans Affairs (VA) in addition to your disability benefits, for which you are rated at 100 percent. You underwent mental health rehabilitation during the extended period of your incarceration, to include anger management training and cognitive behavioral therapy.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. The Board also determined you were properly separated from the Marine Corps after BOI proceedings and approval of the BOI recommendations. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you contend, in part, that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO states in pertinent part:

> There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service or that he suffered from any symptoms incurred by a mental health condition. He submitted post-service evidence of a diagnosis of PTSD; however, no corroborating evidence/documentation was provided to ascertain the etiology of/rationale for the diagnosis. Furthermore, murder and attempted murder far exceed that of what is typically caused by PTSD or symptoms thereof. 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) may aid in rendering an alternate opinion.

The AO concluded, "Based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition (PTSD) that existed in service. There is insufficient evidence to attribute his misconduct to 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.

The Board applied liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition 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 insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact your medical evidence provides no rationale for the diagnosis of PTSD. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to

make such a conclusion and recognized the same concerns raised in the AO. 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.

In addition to applying liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service to include service highlights, the negative effect your discharge has had on your life, your rehabilitation efforts, your mental health issues, disparate treatment between you and others, the harshness of your punishment, the evidence you provided in support of your application, your advanced age, the character references you provided for review, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. While the Board carefully consider the numerous letters of support you provided that broadly attest that you are no longer violent, were a model citizen during your incarceration, stayed in close contact with numerous friends and family, and have many people willing to provide you with work and housing in your post-incarceration life, the Board concluded the favorable factors you provided for consideration were insufficient to outweigh the extreme violence of the murder and attempted murder for which you were convicted. While the Board commends you for your successful rehabilitation during your incarceration and completion of parole, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

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,

4/22/2026

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