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

[redacted]
Docket No. 3502-25
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 18 November 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 enlisted in the U.S. Navy and entered active duty on 6 January 1970. On 18 September 1971, you were involved in a motorcycle accident and were hospitalized. After you recovered from your injuries, you reported to the [redacted] on 29 June 1972. On 21 July

1972, you started a period of unauthorized absence (UA) that ended with your apprehension by civil authorities on 7 August 1972. During your UA, you missed ship's movement enroute to Operations in connection with [redacted] in the [redacted]. You commenced another period of UA on 16 October 1972 that ended after one day. You commenced another period of UA on 26 October 1972 that ended on 11 August 1973. You commenced another period of UA on 7 December 1973 that ended on 10 January 1974.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your DD Form 214 reveals that you were separated from the Navy, on 23 May 1974, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "Good of the Service," separation code of "246," and reenlistment code of "RE-4."

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 25 January 1985, after determining your discharge was proper as issued.

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 for a discharge upgrade and military retirement for medical reasons with retroactive pay and monthly compensation. You contend that you suffered a motor vehicle accident while on active duty that resulted in severe TBI. You also contend that your inability to return to active duty should have been assessed at the time of your accident and that a medical discharge with disability should have been the result of your discharge. You further contend that you were uninformed of the discharge process and you went home without out processing. You finally contend that you were mentally incapable of comprehending the discharge process. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, Department of Veterans Affairs documents, and statement from your son.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO on 25 July 2025. The Ph.D. stated in pertinent part:

> During military service, the Petitioner received medical treatment for a serious motorcycle accident, including head injury. There is evidence of further treatment of residual symptoms consistent with TBI. The VA has diagnosed TBI attributed to military service. The Petitioner was also evaluated by mental health during military service and diagnosed with a personality disorder. It is difficult to attribute his misconduct solely to TBI, given characterological difficulties existing prior to enlistment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "There is in-service evidence of head injury and post-service evidence from the VA of TBI that may be attributed to military service. There is insufficient evidence that his in-service misconduct may be attributed solely to TBI."

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 NJPs and SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command.

Additionally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Further, the Board was not persuaded by your contention that you were denied due process and noted that you provided no evidence, other than your statement, to substantiate your claim.

Further, the Board concurred with the AO and determined there is insufficient evidence that your in-service misconduct may be attributed solely to TBI. The Board applied liberal consideration to your claim to have developed TBI as a result of your 1971 motorcycle accident, 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 sufficient evidence to conclude that you may have suffered from TBI during your naval service. This conclusion is supported by the temporally-remote assessment and diagnosis rendered by a VA as well as the AO. 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 your TBI. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and agreed with the AO that it is difficult to attribute your misconduct solely to TBI given your characterological difficulties existing prior to enlistment. 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 and 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,

12/1/2025

[redacted]