



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

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Docket No. 1416-24
Ref: Signature Date

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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 you did not file your application in a timely manner, the Board waived the statute of limitation 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 August 2024. 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 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 7 January 1991. You were administratively counseled the following day that you were being retained in spite of defective enlistment due to fraudulent entry; you had failed to disclose pre-service involvement with civil authorities and drug abuse.

On 2 July 1991, you absented yourself without authority and remained in an unauthorized absence status until 6 August 1991. After your return to military authority, you were subject to nonjudicial punishment (NJP), on 9 September 1991, for two specifications of violation of the

Uniform Code of Military Justice (UCMJ) under Article 86 due to your UA period and being UA from your appointed place of duty on 17 May 1991. You were issued administrative counseling advising you to correct your deficiencies and were punished with 45 days of restriction and extra duty in addition to \$200 forfeiture of pay per month for two months.

Between 23 - 28 April 1992, you were placed in pre-trial confinement (PTC) pending charges before a special court-martial (SPCM). However, you were transitioned from PTC to pre-trial restriction, which required that you muster at specified locations and times to confirm your whereabouts. While awaiting your trial, on 28 May 1992, you were subject to a second NJP for five specifications of violation of Article 86. Your punishment included three days of confinement on bread and water and \$200 forfeiture of pay.

You were subsequently tried and convicted by a SPCM, on 26 June 1992, for Article 81, for conspiring with another, on 9 January 1992, to commit larceny of Department of Defense (DoD) automobile sticker, the property of another, Article 86, for your UA from your unit from 7 February 1992 through 23 April 1992, and four additional specifications under Article 86, for failure to go to your appointed place of duty at the prescribed time. Although your sentence was limited to 60 days of confinement, it also included reduction to the lowest paygrade of E-1 and a Bad Conduct Discharge (BCD). Following conclusion of appellate review of the findings and sentence of your SPCM, you were so discharged on 8 March 1994.

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 upgrade your discharge and your contentions that you were a good sailor up until the traumatic incident(s) which precipitated your UA. You allege experiencing systematic racism within the ranks directed toward you and a shipmate who was also from ██████████. You state that there would be nooses hung outside your racks daily and racially offensive threats left in notes left on your bunks. You both felt unsafe to the point that you began bunking in the same area, even though you were assigned to different divisions on your ship. You purport to have sought assistance from your chain of command "7-8 times, and nothing was ever done." You went UA to your home because you could no longer take all the hate directed toward you and felt safe at home. You now believe that you have post-traumatic stress disorder (PTSD) and substance abuse issues due to these experiences, for which you claim to have sought treatment. For the purpose of clemency and equity consideration, you submitted a personal statement and a statement from your in-service peer but no documentation describing post-service accomplishments or advocacy letters.

Because you contend that PTSD or another mental health condition contributed to the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing [during which you were represented by qualified defense counsel], there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional

