



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

HD  
Docket No. NR9645-14  
11 September 2014

[REDACTED]

Dear Commander [REDACTED]

This is in reference to your counsel's letter dated 1 August 2014 to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552. Your previous case, docket number NR8564-13, was denied on 24 April 2014. You again seek restoration to the Fiscal Year 13 Navy Reserve Line Commander Promotion List; promotion to commander with the date of rank and effective date you would have received, had you not been removed from the promotion list; and removal of all adverse information.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 11 September 2014. 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, the Board's file on your prior case and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Your counsel contended that the advisory opinion from the Navy Personnel Command dated 19 February 2014, with which the Board substantially concurred in denying your original application, should not have been considered, as it "contains a legal error based on a misunderstanding about what the regulation [Department of Defense (DOD) Instruction 1320.04] excludes and why." The advisory opinion,

citing DOD Instruction 1320.4, dated 14 March 1995, noted that this regulation (paragraph 3.1) defined "Adverse Information" as "Any substantiated adverse finding or conclusion from an officially documented investigation or inquiry." Since the information on which your removal from the promotion list was based came from an investigation conducted by the Chief of Naval Personnel Inspector General (CNP IG), the advisory opinion concluded that it was properly treated as "Adverse Information" the Secretary of the Navy was required to review and consider concerning your promotion, which was a military officer action requiring approval of the President, the Secretary of Defense or confirmation by the Senate. Your counsel, citing DOD Instruction 1320.04, dated 3 January 2014, relied on Enclosure 4, paragraph 1.a(1)(b)2, which referred to information that "Did not result in more than a non-punitive rehabilitative counseling administered by a superior to a subordinate." He contended that this language, which does not appear in DOD Instruction 1320.4, excluded from the definition of "Adverse Information" properly to be considered in connection with your promotion the findings of the CNP IG investigation, because you received only a non-punitive letter of caution for the infraction the CNP IG investigation found you had committed.

The Board found that the advisory opinion properly applied DOD Instruction 1320.4, rather than DOD Instruction 1320.04, which was not issued until well after you had been removed from the promotion list on 21 March 2013. Further, the Board found that even under DOD Instruction 1320.04, the information in question was properly treated as "Adverse Information" to be considered in connection with your promotion. In this regard, the Board noted that Enclosure 4, paragraph 1.a(1)(b) provides that in order for the language of paragraph 1.a(1)(b)2 to be applicable in causing information not to be adverse, the matter concerned must involve "Minor infractions without negative effect on an individual or the good order and discipline of the organization." The Board found that the infraction identified in your case, improperly divulging the results of an officer promotion board, did have a negative effect on the good order and discipline of the Navy.

In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously 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,



ROBERT J. O'NEILL  
Executive Director

Copy to:

