



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

█  
Docket No. 8209-20  
Ref: Signature Date



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.

A three-member panel of the Board, sitting in executive session, considered your application on 13 October 2021. The names and votes of the members of the panel 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 this 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.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to correct your official military personnel file as follows: (1) reinstatement on active duty, to include back pay and allowances; (2) promotion to chief petty officer; (3) removal of the adverse evaluation report for the reporting period 16 November 2015 to 15 January 2016, and (4) any other relief warranted.

The Board noted your previous request, Docket No: NR20180007797, was denied because the Board determined there was no probable material error or injustice warranting your requested relief. Specifically, in your previous submission, you requested reinstatement on active duty with back pay and allowances, promotion to chief petty officer, removal of two evaluations for the periods 16 November 2014 through 15 November 2015 and 16 November 2016 through 15 January 2016, and removal of all adverse documentation originating from your last command.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

You reenlisted in the Navy Reserve on 21 February 2010 for six years. On 28 December 2012, you were mobilized in support of OPERATION ENDURING FREEDOM. Your record contains numerous agreements to remain on active duty starting in April 2015 with the latest document being an agreement to remain on active duty until end of active obligated service on 27 January 2016. The record also reflects that in October 2015, your reserve enlistment contract was extended for three months, changing your enlistment contract end date to 20 May 2016.

In March 2015, charges were preferred against you for failure to go to your appointed place of duty, missing the movement of your unit, making false official statements, and larceny of military property of a value of about \$86K. The charges were referred to general court-martial (GCM) on 8 July 2015. In memorandum from Region Legal Service Office Mid-Atlantic Trial Counsel, which is referenced but not contained in your record, the GCM charges were dismissed on 14 December 2015.

Subsequently, on 15 January 2016, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense for missing movement, false official statements, and larceny. The record, which only indicates you elected to consult with qualified counsel, is incomplete in that it does not include any additional administrative separation documentation.

On 19 January 2016, you received an adverse evaluation report for the period of 16 November 2015 to 15 January 2016 which was submitted to permanently withdraw a recommendation for advancement to chief petty officer due to a loss of confidence in your abilities to perform as a chief petty officer. Relying upon a command investigation which concluded you improperly submitted awards for yourself by purposefully circumventing your immediate chain of command, your commanding officer stated your actions “demonstrated a disregard for the Navy Core Values and actively brought discredit upon the Navy in a Joint environment.” Your rebuttal statement to the adverse evaluation stated your belief that the adverse evaluation report was “based on an incompetent and incorrect investigation that was initially sent to a General Court Martial.” You further noted in the rebuttal that you had been “notified of an administrative separation board” and you “fully intended to contest it.” Lastly, you “reserved your right to submit a statement after the conclusion of the administrative board.”

On 19 January 2016, you acknowledged an administrative remarks (Page 13) entry memorializing the withdrawal of a recommendation for your advancement to chief petty officer due to loss of confidence in your military character and leadership skills. By your signature, you acknowledged the withdrawal and stated your understanding that the “withdrawal of my advancement recommendation for chief petty officer is a permanent action for this advancement cycle, with no administrative recourse.”

On 21 January 2016, per your counsel’s brief, you were notified that you would not be allowed to reenlist.

On 22 January 2016, you transferred from Expeditionary Combat Readiness Center to Navy Mobilization Processing Site (NMPS), [REDACTED] detachment.

On 1 April 2016, you were released from active duty and transferred to the Navy Reserve. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reflects an honorable characterization of service and a RE-1 (recommended for reenlistment) reenry code.

Your record does not indicate your current status in the Navy Reserve nor does it contain documentation indicating you have been discharged from the Navy Reserve.

In your current request for correction, the Board noted you submitted new evidence that was not previously considered by the Board. In addition to the new evidence, you contend reconsideration is appropriate because the previous Board did not address your contentions regarding the special request chit you submitted requesting reenlistment.

The Board carefully considered your contention the command erred in failing to act on your special request chit and that failure, which resulted in you not being reenlisted, effectively ended your military career. Specifically, you contend you submitted a special request chit on 17 December 2015 requesting reenlistment and, by returning the unsigned special request chit on 22 January 2016 without taking action or providing a reason for denial, the command committed legal error by violating OPNAVINST 3120.23D. The Board also considered your contention the command's inaction on the special request chit was an attempt to punish you and prevent your reenlistment. Further, you contend that had the command properly taken action on your request to reenlist, you would have been reenlisted because you had a "stellar reputation," were consistently rated above your peers, had "highest recommendation" to promote, and consistently had the "trust and confidence" of your senior officers and enlisted.

The Board, however, determined there was insufficient evidence that you were unjustly denied the opportunity to reenlist. The Board noted the mere submission of five incomplete special request chits is insufficient evidence to show the chits were properly routed but returned by the command with no action. The Board also concluded that regardless of the status of the alleged special request chit, you were aware of the commanding officer's "answer" regarding your request to reenlist. By your own brief, you indicate you were notified on 21 January 2016 that you would not be allowed to reenlist. Further, on 19 January 2016, you signed your adverse evaluation which withdrew your recommendation for advancement and was marked "not recommend" for retention. The Board also noted there is no evidence you made any attempts to request reenlistment after the contended date your special request chit was returned with no action, despite having several months at NMPS prior to being released from active duty, nor is there any indication you requested reenlistment upon your return to the Navy Reserve despite your RE-1 reentry code. Additionally, the Board considered your specific contention the command committed legal error by not complying with OPNAVINST 3120.32D. However, the Board noted the enforceability guidance of the instruction states a failure to comply with provisions of this instruction "should be corrected by timely disciplinary or administrative action" and concluded there is insufficient evidence the command did not take "timely disciplinary or administrative action" regarding the alleged noncompliance. The Board further determined that even if the Board determined your command failed to comply with OPNAVINST 3120.32D, the Board concluded the purported error would not warrant your requested reinstatement on active duty.

Having determined the command did not err in failing to act on your special request chit and noting you were properly released from active duty at the completion of your required active service, the Board concluded your request for reinstatement on active duty should be denied.

The Board also carefully considered your contention the command did not comply with BUPERSINST 1610.10E dated 6 December 2019. The Board, noting that at the time of the evaluation processing the applicable instruction was BUPERSINST 1610.10D, considered your specific contention the adverse evaluation for the reporting period 16 November 2015 to 15 January 2016 was in error and unjust because the allegations were improperly included by quoting directly from the investigation and commented on legal hold. Additionally, the Board considered your contention an evaluation cannot comment or refer to court-martial unless there has been a finding of guilty and the court-martial is concluded. The Board, however, noted the command did not reference the GCM or administrative separation processing; you referenced these actions in your rebuttal statement of 25 January 2016. The Board further noted the use of the language "legal hold" does not violate the governing instruction nor does the language referencing

the investigation violate the instruction. This Board concurred with the previous Board's determination the evaluation was not used as an alternative to the proper disposition of misconduct and, as discussed above, after determining there was insufficient evidence of an error or injustice in the comments of the evaluation, concluded your request for removal of the evaluation should be denied.

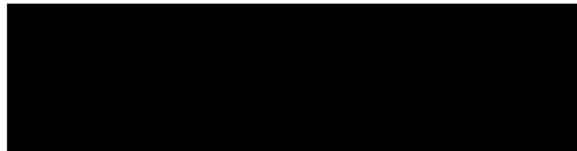
Lastly, the Board carefully considered the new affidavits but concluded there was insufficient evidence to overcome the presumption of regularity and warrant granting your requested relief.

The Board specifically noted your current submission did not provide a new statement or contentions regarding the commanding officer's withdrawal of your recommendation for advancement to chief petty officer and after considering the new evidence submitted with your current request, again concluded the withdrawal was not in error, unjust, or done in retaliation or for the sole purpose of forcing you out of the Navy. In the end, the Board concluded there was insufficient evidence of material error or injustice warranting your requested 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,

11/29/2021

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Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.