



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

█
Docket No: 1176-21
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.

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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 January 2022. 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 also considered the 15 October 2021 advisory opinion (AO) furnished by Navy Personnel Command (PERS-32), the 23 November 2021 AO furnished by the Office of Legal Counsel (PERS-00J) and your rebuttal of 28 December 2021.

In August 2017 while you were assigned as Commanding Officer (CO) for Navy Reserve (NR) Navy Experimental Diving Unit (NEDU) █, you attempted to secure orders for a Chief under your command. The Senior Enlisted Leader (SEL) and Senior Medical Department Representative (SMDR) for NR NEDU █ opposed these orders and you contend that the SEL and SMR were disrespecting your authority. On 31 August 2017, your reporting senior (RS) states that he met with you to discuss your leadership and performance including the situation with the Chief. While you dispute the nature of the meeting, you confirm that you met with your RS. On 1 September 2017, you were relieved of command. Subsequently, you received an adverse fitness report covering the period of 1 December 2016 through 31 October

2017. You submitted a response letter to the fitness report on 30 November 2017 which was endorsed by your RS and included in your official military personnel file (OMPF). Commander, Naval Sea Systems Command requested you be detached for cause (DFC) on 15 January 2018 based on substandard performance; this DFC request was disapproved by Deputy Chief of Naval Personnel on 26 April 2018 and you were detached, but not for cause. On 1 May 2020, you were honorably discharged from the United States Navy Reserve.

The Board carefully considered your request to remove all adverse documentation from your OMPF related to the DFC request including your adverse fitness report covering the period of 1 December 2016 through 31 October 2017. You argue that you were improperly relieved from command, the detachment from command was improper, and the adverse information contained in your fitness report was not supported by the evidence.

The Board found that the evidence provided does not overcome the presumption of regularity to show that you were improperly relieved from command. MILPERSMAN 1611-020 gives command superiors wide discretion to relieve an officer in command in order to ensure accomplishment of the mission. In the Board's opinion, your RS provided adequate justification on why he lost confidence in your ability to command. The Board relied on his comments in the fitness report in question along with his endorsement to your adverse fitness statement rebuttal in making their determination. Although you dismiss those concerns as insignificant and erroneous, the Board took into consideration that the Executive Officer, Senior Enlisted Leader, and Senior Medical Department Representative also had an issue with your decisions and the way that you communicated with them. The Board was not persuaded by your arguments that a substantive investigation by a neutral and detached investigator would have resolved the case in your favor based on the denial of your Article 1150 Complaint by Commander Naval Sea Systems Command. Thus, the Board concluded the preponderance of the evidence supports the decision to relieve you from command.

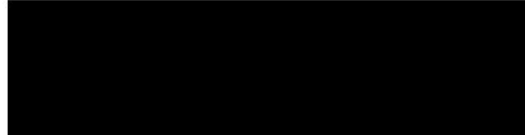
The Board concurred with the AO that the DFC request was not improper since MILPERSMAN 1611-020 requires a DFC request when an officer is removed from command. Further, the Board agreed with the PERS-00J AO that detachment from a command is the norm even after a DFC request is denied. Therefore, the Board concluded that your arguments regarding the wrongful nature of your detachment from your command were without merit.

Based on the above findings that your removal from command and subsequent detachment were supported by the evidence, the Board also concluded the adverse fitness report is a valid report and should remain in your OMPF. The Board concurred with the PERS-32 and PERS-00J AOs that the fitness report was procedurally correct since the reporting senior justified the adverse report markings and the report does not mention the DFC request. Further, the Board agreed that the RS has wide discretion in assigning language and performance trait ratings. Based on the review of the evidence in your case, the Board determined that your assigned trait marks were supported by the evidence and RS comments regarding your performance during the reporting period. Accordingly, based on the preponderance of the evidence, the Board determined there was insufficient error or injustice to grant the relief requested.

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,

2/9/2022



Executive Director

