



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

[REDACTED]  
Docket No: 1628-21  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,  
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) BUPERSINST 1610.10D

Encl: (1) DD Form 149 w/attachments  
(2) Evaluation Report & Counseling Record for the reporting period 6 Dec 06 to 15 Jul 07  
(3) NPC memo 1610 PERS-32 of 29 Mar 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing the Evaluation Report & Counseling Record (Eval) for the reporting periods 6 December 2006 to 15 July 2007, from his official military personnel file (OMPF).

2. Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 October 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 3 May 2007, Petitioner received nonjudicial punishment (NJP) for violation of Article 92 of the Uniform Code of Military Justice; disobeying a lawful order.

c. Petitioner was issued enclosure (2), a Periodic/Not-Observed/Regular Eval for the reporting period 6 December 2006 to 15 July 2007, documenting his nonjudicial punishment (NJP).

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d. Petitioner contends the Eval is not in accordance with the Navy Personnel Evaluation (PES) System guidance as it contains adverse material. Specifically, he was not given the opportunity to sign the adverse Eval as required by the PES manual.

e. Enclosure (3), the advisory opinion (AO), furnished by PERS-32, noted that reference (b) only allows reporting seniors to submit not-observed evaluation reports for short periods of duty not to exceed more than three months and are not to include a promotion recommendation or adverse comments. In consideration of all the evidence, PERS-32 determined the contested Eval at enclosure (2) was submitted in error, and recommends it be removed from Petitioner's OMPF.

#### CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board finds the existence of an error warranting corrective action. The Board noted that Petitioner furnished sufficient evidence that establishes an injustice warranting removal of the Eval. Thus, the Board substantially concurred with the AO that the contested Eval was submitted in error, and concluded that it shall be removed from Petitioner's OMPF.

#### RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing enclosures (2), his Eval for the reporting period 6 December 2006 to 15 July 2007.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/19/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]