



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: 2031-21

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.

A three-member panel of the Board, sitting in executive session, considered your application on 16 November 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, as well as the 18 May 2021 advisory opinion (AO) furnished by the Navy Personnel Command (NPC), Office of Legal Counsel (PERS-00J) and your response.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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.

The Board carefully considered your request to remove your 10 August 2018 non-judicial punishment (NJP), Punitive Letter of Reprimand (PLOR), and all related adverse material from your record. The Board considered your contention that the NJP, PLOR, and all affiliated records constitute an injustice. You also contend that, (1) the NJP findings are unfair in light of your Board of Inquiry's (BOI's) subsequent finding that you did not engage in the alleged misconduct; (2) you received less due process at NJP than you did at your BOI; (3) your right to counsel was violated, you were not afforded the right to consult with counsel prior to your NJP hearing, although you made every reasonable effort to obtain representation; (4) your inability to confer with counsel prior to your NJP deprived you of the benefit of counsel's advice whether to

accept NJP or demand trial by court-martial and severely diminished your ability to properly prepare for the NJP proceeding; (5) the Preliminary Inquiry (PI) relied almost exclusively on unsworn summaries of witness interviews, which were considered by the commander at NJP; (6) the investigating officer's (IO's) decision to create summaries of interviews with "witnesses" is a complete miscarriage of justice. The summaries have no indicia of reliability as they are unsworn interpretations of what the IO thought he heard the "witnesses" tell him; and (7) you did not have the benefit of requesting witnesses at NJP.

The Board noted that a command directed PI substantiated allegations that you sexually harassed your female students, made a false official statement to the IO and wrongfully requested payment from a student for a hotel room. The Board also noted that your commanding officer (CO) found you guilty at NJP and awarded a PLOR for violating three specifications of Article 92, Uniform Code of Military Justice (UCMJ), the Navy Sexual Harassment Prevention and Response Program by making deliberate and unwelcome verbal comments of a sexual nature and Article 133, UCMJ for wrongfully requesting payment from your student for half of your hotel room during a cross-country flight. The Board noted, too, that you acknowledged your Article 31, UCMJ Rights, you elected to appear before your commanding officer (CO), you elected not to have a lawyer present, and you accepted NJP.

The Board substantially concurred with the AO that your record remain unchanged. In this regard, the Board noted that your 9 May 2019 BOI unanimously found that the specified reasons for separation are not supported by sufficient evidence to warrant separation for cause. The Board also noted that according to 10 U.S. Code § 1182, the Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. The Board determined that statute clearly distinguished BOIs as a separate proceeding convened to determine suitability for retention based upon previously adjudicated misconduct and your BOI's finding and recommendation for retention has no bearing on your CO's finding of guilt at your NJP. The Board also determined that BOIs are not convened as a punitive review of NJP, BOI findings are not an exoneration of charges and you could have been appealed your NJP on the basis that it was unjust, but you elected not to. According to the *Manual for Courts-Martial* (2016 ed.) if you considered your punishment to be unjust or disproportionate to the offense, you had the right to appeal through the proper channels to the next superior authority. The Board further noted that after consulting with defense counsel a few days after your BOI, you still elected not to appeal his NJP. Accordingly, the Board determined that you were afforded due process according to regulations.

Concerning your contention that your right to counsel was violated and you were not afforded the right to consult with counsel, the Board noted your 9 August 2018 Notification and Election of Rights, contrary to your contentions you indicated that you spoke with counsel, you accepted NJP, you acknowledged that acceptance of NJP does not precluded further administrative action against you including being processed for an administrative discharge, you requested a personal appearance before the CO and indicated that you provided written matters. The Board also noted your 10 August 2018 Acknowledgement and Waiver of Rights, in which you acknowledged your right to consult with a lawyer, you elected not to remain silent, you elected not to consult with a

retained or appointed lawyer, or to have a lawyer present, you also acknowledged making these decisions freely and voluntarily. The Board determined that you were in fact afforded the right to consult with counsel before NJP, and although you are afforded the right to consult with counsel there is no right to counsel prior to NJP being imposed. Moreover, the Board found no evidence that your consultation with counsel was insufficient to prepare you to decide whether to accept NJP or demand trial by court-martial.

Concerning your contentions regarding the PI, the Board found no evidence that the preparation and conduct of the PI was in error or legally insufficient, and you provided none.

Concerning your contention that you did not have the benefit of requesting witnesses, the Board noted that according to the *Manual for Courts-Martial* (2016 ed.) you had the right to request to have witnesses present, however, the Board found no evidence that you actually requested witnesses according to regulations.

The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board determined that your NJP is valid and your CO acted within his discretionary authority pursuant to the *Manual for Courts-Martial* (2016 ed.). Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

12/10/2021

[REDACTED]

Executive Director

[REDACTED]