



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: 2147-21

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 7 December 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 13 April 2021 advisory opinion (AO) furnished by the Navy Personnel Command (NPC), Office of Legal Counsel (PERS-00J), 19 April 2021 AO furnished by the NPC (PERS-32) and your response.

The Board carefully considered your request to remove your fitness report for the reporting period 16 November 2019 to 2 October 2020 and promotion to E-7 retroactive to the date that you would have been promoted. You also request to remove your 25 September 2020 Letter of Instruction (LOI) and 5 August 2020 Report and Disposition of Offense(s)/non-judicial punishment (NJP). The Board considered your contentions that: (1) typically the imposition of a LOI is not a form of punishment, according to the Navy Performance Evaluation System Manual (EVALMAN) non-punitive letters of caution (NPLOCs) are leadership tools and should not be mentioned in an official record; (2) your LOI was erroneously imposed and filed in your record, because the Report and Disposition of Offense(s) indicated a reprimand in writing as punishment, accordingly, you assumed that your LOI was intended as a punitive reprimand although it was titled as a LOI; (3) your commanding officer (CO) submitted a Memorandum for the Record (MFR) stating that he incorrectly annotated 'reprimand in writing' instead of the correct action 'dismissed with warning'; and (4) the withdrawal of the recommendation for

advancement was inaccurate, unjust, and wrongly submitted, because it was based on actions for which you had been found not guilty of committing, there is no other basis for the change in recommendation, and your CO improperly used the withdrawal of advancement as punishment for the allegations against you. You claim that you met all of the qualifications for promotion to E-7 before your promotion recommendation was withdrawn.

In your 22 June 2021 response to the AO, you withdrew your request to remove your LOI and NJP because PERS-00J noted that the contested documents are not on file in your official military personnel file (OMPF).

The Board noted that you were the subject of a Chief Petty Officer Disciplinary Review Board (DRB) on 18 August 2020 for violations of Article 92 (failure to obey an order or regulation), Article 107 (false official statement) and Article 134 (fraternization), Uniform Code of Military Justice (UCMJ), specifically, for using your personal cell phone and for unprofessional communication with a nursing candidate. The DRB Report noted that you demonstrated remorse for your actions and understood that your actions were inappropriate and not in line with standards. The DRB Chairman recommended issuing you a Letter of Caution, revoking your Basic and Advance Officer Recruiter qualification, stopping your special duty day, and retraining on fraternization and recruiter improprieties. The Board also noted that you received NJP on 5 September 2020 for violation of Articles 92 and 107, UCMJ. The Board noted, too, that your CO dismissed your NJP and corrected an administrative error in the 'Action of Commanding Officer' section of the Report and Disposition of Offense(s) by issuing a MFR, in which he clarified his findings at your NJP proceedings and documented that he incorrectly annotated 'reprimand in writing' instead of 'dismissed with warning'.

The Board, however, substantially concurred with the AOs that your record remain unchanged. In this regard, the Board noted that the EVALMAN does not mention LOIs, and determined that your LOI is not punitive in nature, a LOI is not a NPLOC, and your CO was not prohibited from mentioning your LOI in your contested fitness report. The Board also determined that your reporting senior (RS) provided sufficient justification for the submission of your Special fitness report and your misconduct for "sending inappropriate and unprofessional messages to a Navy applicant via unauthorized personnel cell phone" was an accurate statement and appropriately documented. The Board also noted that the EVALMAN allows RSs to submit a Special fitness report to withdraw an advancement recommendation, your RS commented on facts determined independently by the DRB and your statements. Moreover, according to the EVALMAN and Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve your Special fitness report was required for your CO to withdraw his advancement recommendation. The Board further determined that your CO acted according to regulations and acted within his discretionary authority when issuing your Special fitness report, documenting your misconduct, and withdrawing his promotion recommendation.

Concerning your request for promotion to E-7, the Board noted that your CO withdrew his advancement recommendation before the promotion board convened and your record was never considered by a promotion board. The Board also noted that according to the Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve, advancement to E-7, E-8, and E-9 requires selection board action. The Board determined that your request for

promotion to E-7 is not feasible without an appropriately convened promotion board. 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,

12/17/2021

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Deputy Director

Signed by: █