



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

■  
Docket No. 2213-21  
Ref: Signature Date

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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 applications on 2 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 applications, 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) provided by the Navy Personnel Command (PERS-32). The AO was provided to you on 27 October 2021. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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.

The Board carefully considered your request to remove your Fitness Report & Counseling Record (Fitrep) for the reporting period 1 November 2019 to 20 December 2019. The Board considered your contentions that the Fitrep negatively impacted your continued service in the Navy, the Fitrep was issued with a 1 of 1 "Promote" promotion recommendation, and you were not selected for any future opportunities. You assert you reached out to the Commanding Officer (CO) and she refused to sign or provide an explanation or make corrections to the Fitrep. You also assert that the Inspector General (IG) retaliation complaint you submitted was a long process that was not going to result in any tangible action over the course of the six months during which you tried to pursue it.

The Board, however, substantially concurred with the AO that the Fitrep is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. Specifically, the Fitrep was not adverse nor declining from the previous Fitrep written by the same Reporting Senior, and it contained the same markings and promotion recommendation. Although you understood your right to submit a statement for inclusion in with the Fitrep in your official military personnel file, you chose not to do so. The Board determined that there is no evidence in the record, and you submitted none, that your CO acted illegally or in retaliation of you not waiving your operational deferment to accept a sea-going requirement. Additionally, your CO provided rational support for her decision to mark you as "Promotable." The Board thus concluded that your request is lacking in substantial evidence of an error or injustice warranting removal of this report.

The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with Department of Defense policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

12/23/2021



Deputy Director

Signed by: 