



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: 3011-21
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 application on 4 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, as well as the 26 May 2021 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-80), the 6 August 2021 AO furnished by the Office of Legal Counsel (PERS-00J), and your response to the AOs.

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 change your record to reflect that you were selected during the Fiscal Year (FY) 2019 Navy Active Duty Staff Corps Captain Promotion Selection Boards (PSB), change your date of rank to 1 September 2019 instead of 1 October 2020, and back pay and allowances. Alternatively, you request a FY 2019 Special Selection Board (SSB) and recalculation of your high-three for retirement. The Board considered your contentions that the Judge Advocate General (JAG) Corps officers committed illegal racial and gender discrimination for over twelve years as evidenced by the JAG Corps Diversity Accountability Review (DAR) and other documents. You also contend that there is probable material error and injustice in the JAG Corps officer detailing and in the operation of statutory

promotion boards—specifically—the FY 2019 and FY 2020 promotion boards for Judge Advocates. You claim that JAG Corps Flag officers violated the U.S. Constitution, Federal statutes, Executive orders, Department of Defense (DOD) and Department of the Navy (DON) instructions, directives, manuals and the Joint Ethics Regulation. You also claim that JAG Corps Flag officers acted arbitrarily and capriciously in selecting female and minority officers for hands on detailing and for selection at statutory promotion boards so they could create an upper management cadre at the O-6 level of diverse female and minority officers, in violation of myriad Equal Opportunity laws, regulations, and directives.

Unfortunately, the Board disagreed with your arguments for relief. In making their findings, the Board substantially concurred with the AOs. In this regard, the Board noted that you were considered for promotion and not selected by the FY 2019 and FY 2020 Navy Active Duty Staff Corps Captain PSBs but were subsequently selected for promotion during the FY 2021 PSB and promoted to O-6 on 1 October 2020. Despite your statement and supporting evidence you furnished, the Board found no evidence of material error or injustice during the conduct of the FY 2019 and FY 2020 PSBs. According to the AO furnished by PERS-80, a review of the board records was conducted and revealed no illegal discrimination on the basis of race or gender. In addition, all board members certified via oath and signature that they conducted the board proceedings without prejudice or partiality in accordance with all the precept, convening order and all other instructions. Moreover, the PSB precept provides guidance on Equal Opportunity and Diversity and provides that the guidance “shall not be interpreted as requiring or permitting preferential treatment of any officer or group of officers on the grounds of race, religion, color, sex (including gender identity), sexual orientation or national origin.” After examination of the evidence, the Board concluded the preponderance of the evidence shows that your record was properly considered during the FY 2019 or FY 2020 PSBs and that the officers that were selected for promotion were qualified for selection.

Concerning your request for a SSB, the Board determined that there is no basis for a SSB. The Board noted that there is no substantive change to your record that would have influenced the PSB’s decision. The Board also noted that 10 U.S. Code § 628 and SECNAVINST 1402.1 provide guidance regarding SSBs. You must demonstrate, by a preponderance of evidence that: (1) the PSB acted contrary to law in a matter material to the decision of the board; (2) the action of the PSB involved material error of fact or material administrative error (3) that material information was not before the PSB for its consideration. The Board found that you failed to demonstrate, by a preponderance of the evidence, that any of those criteria were met.

Moreover, despite your arguments to the contrary, the Board relies on a presumption of regularity to support the official action 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 is not an investigative body and relies primarily on documentary evidence of an error or injustice in your naval record to adjudicate cases. Evidence that they found lacking in your case to support the allegations you raised. Therefore, the Board recommended that the Navy Inspector General would be a more appropriate agency to direct your allegations of illegal activities within the JAG Corps. Should a subsequent investigation substantiate your allegations of illegal activity, the Board recommends you request reconsideration of your application with such evidence.

You also indicate in your application that you are the victim of reprisal. 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 DoD 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,

2/3/2022

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Deputy Director
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