



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

■
Docket No: 3615-21
Ref: Signature Date

Dear ■:

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 15 February 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. The Board also considered the 9 August 2021 advisory opinion (AO) furnished by Navy Personnel Command (PERS-32). The AO was provided to you on 23 September 2021, and you were given 30 days in which to submit a response.

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 the evaluation reports covering the periods 16 November 2018 to 15 November 2019 and 16 November 2019 to 27 February 2020. In addition, the Board considered your request for a Chief Petty Officer Special Selection Board (SSB). You contend that the evaluations are invalid as you were unjustly relieved from your duties as Supply Lead Petty Officer (LPO) and you were wrongly retaliated against due to your discovery of unauthorized purchases within the department. You contend the evaluations inaccurately show a decline in performance.

The Board noted that the evaluation covering the period 16 November 2018 to 15 November 2019 is declining in five performance traits from the previous report with the same reporting senior

(RS). The Board concurred with the AO that the RS provided justification for the decline, “relieved of his duties as Supply LPO due to a loss of confidence in his leadership,” as required by BUPERSINST 1610.10D. The Board also concurred with the AO that the evaluation covering the period 16 November 2019 to 27 February was not declining or adverse and followed BUPERSINST 1610.10D guidance. The Board further noted that the Inspector General dismissed your whistleblower complaint alleging reprisal by command leadership and that your Article 138 Complaint against your former commanding officer (CO) for the adverse evaluation was denied. Based on these factors, the Board determined that you did not furnish sufficient evidence to substantiate your contention that the evaluations were unfair or that the RS acted improperly, and concluded that the evaluations shall remain in your record. Accordingly, the Board found no basis to approve your request for a Chief Petty Officer SSB.

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,

2/23/2022



Executive Director

Signed by: 