



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. 3628-21
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 18 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your 12 September 2018 nonjudicial punishment (NJP). The Board considered your contentions that during the period of the NJP, you were on leave, assigned to temporary duty to the Staff Non-Commissioned Officer Academy Career Course, and attended two Share Point courses. You assert the Senior Enlisted Advisor (SEA) told you he would have your back on the investigation if you had his on the Physical Fitness Test (PFT); however, during the NJP, the SEA accused you of lying about the falsification of PFT scores even with proof you were not there. You also claim that the NJP was imposed in reprisal, but did not specify in what manner you were reprimed.

The Board noted you received NJP for violating Article 92, Uniform Code of Military Justice (UCMJ), for being derelict in the performance of your duties as the Command Physical Training Representative from about 26 February 2018 to 30 June 2018. The Board also noted that you acknowledged your Article 31, UCMJ rights, you were afforded the opportunity to consult with counsel, you accepted NJP in lieu of trial by court-martial, and you did not appeal your Commanding Officer's (CO's) finding of guilt at NJP.

The Board determined that your NJP is valid and was conducted according to the Manual for Courts-Martial (2019 ed). Although you provided evidence that you were not at your command during specific periods of time while assigned as the Command Physical Training Representative, the Board noted that the Unit Punishment Book identifies a finite period of time spanning from 26 February 2018 to 30 June 2018 that your CO found you to be derelict in your duties, and not specifically on the dates you were absent from your command. The Board noted that your CO had the authority to impose NJP, that you were afforded the opportunity to appeal your NJP, and you chose not to do so. The Board thus concluded that the NJP did not constitute probable material error or injustice warranting removal from your record.

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,

12/5/2021



Deputy Director

Signed by: 