



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. 4164-21
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 28 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 28 October 2021 Advisory Opinion (AO) provided by Navy Personnel Command, Office of Legal Counsel (PERS 00J). The AO was provided to you on 15 November 2021. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined 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 22 June 2017 nonjudicial punishment (NJP) for violation of Article 92 of the Uniform Code of Military Justice (UCMJ) and your Detachment for Cause (DFC). Specifically, you received NJP for wrongfully engaging in an unduly familiar relationship that did not respect the differences in rank and grade with an enlisted Sailor. You further requested that, providing the Board grants your removal requests, your "promotion status be reset" so that your record can be considered for promotion without the NJP and DFC information.

The Board noted your previous request, Docket NR20180009817, was denied. Specifically, the previous Board determined your commanding officer (CO) appropriately relied on a preliminary inquiry (PI) that substantiated your violation of Article 92 of the UCMJ. The previous Board further determined the decision of the Board of Inquiry (BOI), which determined the preponderance of evidence did not support your separation by reason of misconduct or by reason of substandard performance, was not binding on your CO who had independent authority to determine whether you committed misconduct.

[REDACTED]

Due to the additional relief requested and new contentions submitted with your current submission, the Board carefully reconsidered your request for relief. You contend relief should be granted due to “faulty legal advice provided by the Navy, compounded with an improperly conducted PI and a complete lack of evidence.” Specifically, you contend the CO did not “apply” the required preponderance of evidence standard, there was no evidence to “verify” the fraternization, and the PI, which was the “only evidence” at NJP, included statements from an individual who had not signed a waiver of her rights. You further contend the “issue” had already been handled at the lowest level by the previous CO, and since your “tours ran smoothly with great efficiency” and you “consistently performed at the highest levels on the water front” that the alleged relationship was not detrimental to good order and discipline.

The Board, however, substantially concurred with the AO that the CO had sufficient evidence on which to base a guilty finding at NJP. The Board noted the enlisted Sailor’s statement could be used as evidence against you regardless of whether she waived her Article 31b rights and determined the Sailor’s statements combined with your wife’s allegations and your own statement were sufficient evidence for the CO to base his guilty finding at NJP. Further, the Board concluded the fact that the BOI came to a different conclusion does not in any way detract from the validity of the CO’s decision at NJP, which is separate and distinct from the BOI.

The Board also considered your explanation that you did not appeal the NJP or submit written rebuttals to the punitive letter of reprimand or Report of NJP because you were following the legal advice given to you by a Region Legal Service Office attorney whom you contacted prior to the NJP and trusted had your “best interest” in mind. Specifically, you contend you were told to “abstain” from any written or verbal statements. You explain that had you known your actions would make your application to the Board less credible, you would have “moved forward” with rebuttal statements. This Board noted your explanation and concluded your decision to not appeal or submit rebuttal statements was not negatively relied upon in their determination of whether the NJP and DFC should be removed from your record.

In the end, this Board determined there was insufficient evidence of an error or injustice in the CO’s discretionary decision to impose NJP, and concluded your NJP should remain unchanged in your official military personnel file (OMPF). Further, the Board determined the DFC was warranted and supported by the record and should also remain unchanged in your OMPF. Having taken no action to remove your NJP and/or DFC, the Board also denied your request to “reset” your promotion status.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/10/2022

[REDACTED]

Deputy Director

[REDACTED]