



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

██████████
Docket No: 4167-21
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 7 June 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 the 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 7 April 2022 advisory opinion (AO) furnished by the Office of Legal Counsel ██████████ and the 8 February 2022 AO furnished by Navy Personnel Command ██████████. The AOs were provided to you on 12 April 2022. 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.

In July 2017, you were stationed at Naval Forces Central Command (NAVCENT), ██████████. On 15 August 2019, you were notified that your Commanding Officer wanted to impose non-judicial punishment (NJP) on you for three specifications of violation of the Uniform Code of Military Justice (UCMJ), Article 86. You were advised of your rights concerning the contemplated imposition of NJP, and initially, you exercised your right to refuse NJP. Consequently, on 19 August 2019, you were placed on legal hold, which kept you in ██████████ pending court martial. Once you were notified of your legal hold status, you elected on 21 August 2019 to accept NJP. On 25 August 2019, NJP was imposed for three specifications of violation of the UCMJ, Article 86 (absent from place of duty, abandoning watch or guard, and failure to go to place of duty).

[REDACTED]

You were awarded reduction in grade to E-5 (suspended for six months). You did not appeal the punishment. On 7 October 2019, you acknowledged receipt of the report of NJP held on 25 August 2019, and you also acknowledged that the report of NJP would become a part of your official military personnel file (OMPF).

The Board carefully considered your request to remove the documentation regarding your NJP, to be awarded the Naval Achievement Medal for service between July 2017 to August 2019, and to have your evaluation report and counseling record for the reporting period 1 January 2019 to 12 September 2019, as well as your 26 May 2021 Statement to the Record entered into your OMPF. The Board considered your entire 12 June 2022 statement and your explanation of the events and circumstances that led up to the imposition of your NJP, to include your assertion that your command was “very toxic, volatile, and [its] violation of equal opportunities” during your tour of duty. You also assert “ongoing harassment, ostracization and unfair treatment” as well as being a victim of a physical assault in June of 2019, which you sought mental-health treatment for.

The Board considered your contention that while you were “highly medicated” at the treatment facility, you were told by the Command Master Chief that you had “no choice but to accept [NJP]. Additionally, you assert that you felt coerced and forced into accepting NJP, and that you were “taken out of the Hospital and made to sign paperwork and stand NJP.” Next, you assert that, after returning to [REDACTED], you were reevaluated by a physician prescribed a milder medication, and removed from limited duty three months later. Lastly, you assert that, while reviewing your NJP paperwork in June 2021, you found “many discrepancies” with the evidence as well as many of your statements being altered. You argue that, had you not been coerced into accepting NJP, you would have been able to “state your case” and you would have been able to call on witnesses to testify to the facts.

The Board, however, substantially concurred with the Office of Legal Counsel AO that there is insufficient evidence that you were coerced into accepting NJP. The Board noted that being placed on legal hold is standard practice in the military justice process as courts-martial are held where the alleged misconduct occurred in order to aid in gathering witnesses and evidence for the proceeding. The Board also noted that in your notification and election of rights, on 15 August 2019, you acknowledged all of your procedural rights regarding acceptance of NJP, to include your right examine evidence against you that your Commanding Officer intended to rely, to present matters in defense, extenuation, and mitigation, and to have witnesses attend the proceeding. The Board therefore found your argument that “had you not been coerced into accepting NJP, you would have been able to ‘state your case’ and you would have been able to call on witnesses to testify to the facts” is without merit. The Board further noted that you spoke with counsel before the NJP and you did not appeal the NJP.

Additionally, the Board noted that you did not furnish any potentially mitigating evidence in support of your assertions of a toxic work environment, ongoing harassment, ostracization and unfair treatment, a physical assault, or any documentation of your medical or mental health condition and hospitalization. The Board also noted that there is no evidence, other than your assertion, that the NJP evidence as well as many of your statements were altered.

[REDACTED]

The Board concluded it was within your CO's discretionary authority to impose the NJP, the NJP was properly administered, and the punishment was permissible. Consequently, the NJP documentation will remain in your record. The Board further determined that your evaluation and statement regarding the evaluation is already in your OMPF.

Next, the Board noted that, per the 8 February 2022 AO furnished by Navy Personnel Command (PERS-32), your 1 January 2019 to 12 September 2019 Evaluation Report and Counseling Record, as well as your 26 May 2021 Statement to the Record, have been filed in your OMPF in accordance with BUPERS Instruction 1610.10D. Accordingly, no corrective action is required by this Board.

Finally, with regard to your request to be awarded a Navy Achievement Medal for your period of service between July 2017 and August 2019, the Board noted that the Board may only correct service records based on errors or injustices, and may do so only after other avenues of administrative relief have been exhausted. The Board concluded that no further action can be taken until you exhaust your administrative remedies with the Navy. Specifically, you must first petition the Navy Personnel Command [REDACTED] to consider your request for a Navy Achievement Medal.

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,

7/7/2022

[REDACTED]

Deputy Director

[REDACTED]