



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: 4469-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your reconsideration request for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. You previously petitioned the Board for Correction of Naval Records (Board) and were advised in the letter dated 26 February 2021 that the Board directed redaction of language in Block 41 of the evaluation report covering the period 16 September 2015 to 5 May 2016 and denied relief regarding your other contentions. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your reconsideration request 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 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 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.

On 27 February 2015, you received a Letter of Instruction (LOI) directing you not to engage in clinical medical evaluation or treatment or participate in sick call. A 20 May 2015 investigation determined you were prescribing narcotics without authority in violation of the 27 February 2015 LOI. On 24 July 2015, a Disciplinary Review Board (DRB) recommended you receive non judicial punishment for violation of Article 92 (failure to obey a lawful order) and Article 112a (wrongful use and possession of a controlled substance, with the intent to distribute said substance) of the Uniform Code of Military Justice (UCMJ). On 4 August 2015, you received a second LOI summarizing the DRB.

On 29 April 2016, you were found guilty at Special Court-Marital (SPCM) of violation of Article 134 of the UCMJ for obstruction of justice and you were awarded a Punitive Letter of Reprimand (PLOR). You received a regular evaluation for the reporting period 16 September 2015 to 5 May 2016 with a promotion recommendation of Significant Problems. On 20 May 2016, your Commanding Officer (CO) removed your Medical Deep Sea Diving Technician qualification due to loss of confidence. On 14 June 2016, you filed a clemency request. On 6 September 2016, a Judge Advocate provided a legal review of the record of trial. On 22 February 2017, you were discharged with an honorable characterization of service.

The Board carefully considered your reconsideration request to (1) reverse the SPCM finding and sentence; (2) remove the PLOR; (3) grant constructive active duty credit from the date of discharge; (4) return your Navy Enlisted Classification (NEC); (5) return your special duty pay (Dive and Special Duty Assignment); and (6) remove the evaluation and counseling record covering the period 15 September 2016 to 16 May 2015. You argue via counsel that (1) the SPCM findings of guilty were not legally and factually supported by the evidence; (2) that your SPCM was reviewed for legal sufficiency by a judge advocate who was conflicted by both an actual and implied conflict of interest; (3) that the legal review of your SPCM findings was legally and procedurally deficient; (4) that the fitness report promotion recommendation of the evaluation for 15 September 16 to 16 May 2015 was not permissible given the Board's removal of language in that evaluation; and that (5) it was improper for your CO to not recommend reenlistment after one negative fitness report.

For your reconsideration request, you submitted three enclosures; however, only two enclosures were considered as new evidence by the Board as your text message from the record of trial was submitted in your original request. The two pieces of new evidence were a statement from a retired Staff Judge Advocate and an email chain between your attorney and the Commander, Navy Region Southwest Staff Judge Advocate office.

The Board determined that the new evidence was not sufficient to support your contention of improper legal review. A Staff Judge Advocate can direct another Judge Advocate to review a court-martial. Moreover, the evidence did not support the contention that the Judge Advocate who conducted the review was disqualified pursuant to the Rules for Court-Martial. The Board further found that the new evidence did not provide any additional information to support your request to reverse the SPCM finding and sentence, to remove the PLOR, to grant constructive active duty credit, to return your NEC, and to return your special duty pay.

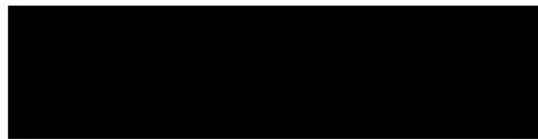
The Board noted that you received three marks of 1.0 (Below Standards) for blocks 35-37 for the 16 September 2015 to 5 May 2016 evaluation. Although the Board removed one comment in block 41 in the 2021 decision, another block 41 comment in the evaluation remained, which stated that you were reassigned to [REDACTED] Headquarters, providing justification for the adverse marks. Thus, the Board determined that the evaluation, as previously modified, contains no material error or injustice warranting corrective action.

Finally, the Board determined the CO's reenlistment denial was proper. Notwithstanding the adverse evaluation, you also had a PLOR as well as a SPCM finding of misconduct in your record to support the CO's decision to not recommend reenlistment.

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

