



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

█  
Docket No: 5227-21  
Ref: Signature Date



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 18 January 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, as well as the 1 September 2021 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32). The AO was provided to you on 5 October 2021, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to replace your fitness report for the reporting period 6 August 2016 to 31 October 2016 with the fitness report you furnished. You also request to remove the fitness report for the reporting period 1 November 2016 to 30 June 2017, or remove block 40 and 41, or to replace the report with the fitness report you furnished. The Board considered your contention that the fitness report ending 31 October 2016 is not the fitness report you signed. You also contend that the block 40 recommendation and block 41 comments on your fitness report ending 30 June 2017 were changed to remove the "CO Afloat" and "Command at Sea" recommendations. You claim that the changes were made due to a report that you made regarding first-hand knowledge of sexual misconduct of senior officers within your organization. You also claim that according to the Under Secretary of Defense (SECDEF) memo, the Navy's intent is to prevent senior raters from evaluating those who have reported on them.

The Board, however, substantially concurred with the AO that your fitness reports are valid. In this regard, the Board noted that according to the Navy Performance Evaluation System Manual, the evaluation of your performance, standing within a summary group, and corresponding promotion recommendation are all the responsibilities of your reporting senior (RS). In this case, it was your reporting senior's duty to evaluate your performance based on his/her observation to include assigning career recommendations. The Board also noted that your fitness reports are not adverse, they contain no adverse performance traits, promotion recommendations or comments. The Board determined that nothing in your petition indicates that your RS acted for illegal or improper purposes or that your fitness reports lacked rational support.

The Board noted that the previous Board acknowledged the 6 April 2018, Navy Inspector General (IG) response to alleged reprisal actions, in which the Navy IG reviewed the allegations, declined to investigate and forwarded the complaint to the Department of Defense IG (DODIG). The DODIG reviewed the results of the declination worksheet, and concurred with the findings. The Board also noted the 13 November 2019 Under SECDEF memo and found your evidence insufficient to conclude that you were the victim of reprisal in violation of 10 USC § 1034. Moreover, 10 USC § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the [Military Department'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 [Military Department'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 [Military Department] 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 [BCM/NR] 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 [BCM/NR], therefore, please also include previously presented documentation that supports your statements." Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

2/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]