



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

██████████
Docket No. 5653-21
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 12 May 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of 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, and the advisory opinion (AO) provided by the Office of Legal Counsel (PERS-00J) dated 22 November 2021. The AO was provided to you on 23 November 2021. Although you were afforded an opportunity to submit a response, 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.

The Board carefully reviewed your request to remove your 20 October 2020 nonjudicial punishment (NJP) and to reinstate your rate to Petty Officer First Class/E-6. The Board considered your contentions that the Administrative Discharge Board (ADB) found no evidence of a pattern of harassment, the first command investigation findings contradicted the second investigation findings, and that the Command Managed Equal Opportunity Manager only knew about one investigation.

The Board, however, substantially concurred with the AO, that given the presumption of regularity, your petition amounts to an unsupported claim that the actions taken by your command were incorrect and improper. This unsupported claim is not enough to overcome the

objective evidence of your actions, which were investigated by the command and found to be legally sufficient by the Staff Judge Advocate and its connection to the issuing official's decision to impose NJP for failing to obey an order or regulation. The Board noted that prior to the imposition of NJP, you acknowledged your Article 31, UCMJ Rights, you consulted with counsel, and you accepted NJP; however, you did appeal your Commanding Officer's (CO) finding of guilt at NJP. Despite your denial of the allegations, the CO relied on the statements of the other parties involved, found you guilty, and the appellate authority denied your appeal. The Board thus determined that the CO had the authority to impose NJP based on his position and the nature of the offense. The Board further determined that your NJP is valid, was conducted in accordance with the Manual for Courts-Martial, your CO was justified in taking appropriate measures given your actions, and the reduction in rate was appropriately awarded.

With regards to your contention that the ADB found no evidence of a pattern of harassment, the Board noted that the purpose of an ADB is to determine whether you should remain in the U.S. Navy and, despite the ADB finding no preponderance of evidence, this alone does not form a basis for overturning the NJP. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

6/10/2022

