



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

█  
Docket No: 6776-21  
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 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 30 November 2021 advisory opinion (AO) furnished by the Office of Legal Counsel (PERS-00J) and your rebuttal of 23 May 2022.

On 15 April 2019, █ Police dropped you off at the Visitor Control Center at █. According to the Incident Report, you were highly intoxicated, stumbled as you walked, and urinated on a tree. When security officers asked you questions, you failed to answer, became verbally hostile, and used indecent language. The Incident Report lists several violations of the Uniform Code of Military Justice to include Article 134 Disorderly Conduct; Article 133 Conduct Unbecoming an Officer; and Article 92, Failure to Obey Order or Regulation. On 22 April 2019, Commanding Officer, Fleet Readiness Center █ issued you a non-punitive letter of caution (NPLOC).

On 11 June 2020, Navy Personnel Command (NPC) notified you that while you were selected for promotion to O-5, Commander, on the Fiscal Year (FY)-21 Active Duty Navy Commander Line (Aerospace Engineering Duty Officer) list, the Secretary of the Navy (SECNAV) withheld your nomination for promotion pending review of the 15 April 2019 incident. You submitted a statement in response to the withhold notification. On 7 June 2021, the Chief of Naval

Operations (CNO) wrote an Action Memo to SECNAV recommending removal of your name from the FY-21 promotion list, noting that the April 2019 event was a serious alcohol-related incident and that your behavior that night caused responding paramedics to fear for their safety. The Action Memo further states that the incident raised concerns about your judgment and military bearing, and that the selection board was not aware of this incident when they made their promotion decision. On 15 July 2021, NPC informed you that SECNAV removed your name from the FY-21 Active-Duty Navy Commander Line promotion list.

The Board carefully considered your request for reinstatement on the FY-21 Active Duty Navy Commander Line (Aerospace Engineering Duty Officer) promotion list and promotion to Commander. In addition, the Board considered your request to remove the CNO Action Memo and NPC letter, notifying you of SECNAV's decision to remove your name from the FY-21 promotion list, from your official military personnel file (OMPF). You argue that your removal from the promotion list was based on a mischaracterized summary of the 15 April 2019 incident. Specifically, you argue that your behavior did not cause the paramedics to fear for their safety and that you did not threaten anyone with physical harm that night.

The Board concurred with the Advisory Opinion that the Incident Report expressly states that you were verbally abusive with the paramedics and that the paramedics said they would not transport you because they did not want to be assaulted. The Board further noted that the NPLOC stated you were extremely intoxicated, uncooperative with law enforcement, and belligerent and disrespectful to other Sailors were trying to carry out their duties. The Board determined that even if SECNAV ignored the paramedics' concern about being assaulted, your behavior on 15 April 2019, which included a high level of intoxication, refusal to respond to law enforcement officer's reasonable questions, aggressive and vulgar language to law enforcement, and public urination, was sufficient evidence for SECNAV to determine that removal from the promotion list was appropriate. Consequently, the Board determined that there was no material error or injustice regarding the decision to remove your name from the FY-21 Active-Duty Navy Commander Line promotion list and concluded that the adverse documentation shall remain in your record. Accordingly, the Board found insufficient evidence of error or injustice to warrant 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,

6/28/2022

██  
Executive Director  
██