



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

█  
Docket No: 416-22  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. 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 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.

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 19 March 2017, the Navy Exchange (NEX) Loss Prevention team apprehended you after observing you place items in a cooler and leave the store without paying for the items in the cooler. The NEX team concluded that you deliberately concealed the items in order not to pay for them and you were turned over to military authorities. Based on your actions, on 21 March 2017, your Commanding Officer (CO) found you guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ), Article 121 – Larceny and awarded you a Punitive Letter of Reprimand (PLOR). You appealed the NJP but were denied, on 31 May 2017, by Commander, █. On 9 June 2017, your CO requested that you be detached for cause (DFC) from █, by reason of misconduct. In September 2017, you were notified that the Fiscal Year (FY) 2018 Lieutenant Command

Promotion Selection Board did not select you for promotion and, as a twice failed to select officer, you were slated to separate from the Navy 31 March 2018. On 9 January 2018, you underwent a Board of Inquiry (BOI) which determined that the preponderance of the evidence did not support a finding of misconduct for larceny or substandard performance. On 15 February 2018, you received an adverse fitness report covering the period 1 February 2017 to 31 January 2018, with a “significant problems” promotion recommendation due to the NJP. On 31 March 2018, you were discharged due to non-selection with an Honorable characterization of service.

The Board carefully considered your request to remove all adverse documentation from your official military personnel file (OMPF) regarding the NEX incident to include the record of NJP, the PLOR, the adverse fitness report, and the DFC records. The Board also considered your request to be promoted to lieutenant commander, as if selected by the Fiscal Year (FY) 2018 Lieutenant Commander Promotion Selection Board, with the date of rank set for the date you would have been promoted and all back pay. You argue that the CO of the [REDACTED] unjustly ordered a NJP within 48 hours of the incident and did not allow you sufficient time to gather and present evidence. You further note that a subsequent BOI, in which you were allotted time to gather evidence, did not make any findings of misconduct or substandard performance. You further contend that you were subject to an injustice as the promotion selection committee could not make an informed decision because it only had the guilty NJP finding regarding the incident and not the BOI finding to review.

First and foremost, the Board found no evidence you were denied due process or treated unjustly by the imposition of NJP within 48 hours by your CO. In making this finding, the Board noted that you exercised your due process rights and appealed the NJP findings, your appeal was considered by the general court-martial convening authority, and it was ultimately denied. Therefore, the Board determined that any due process issues related to the NJP were resolved with the denial of your appeal. Second, the Board noted that the NJP and the BOI processes are separate and independent. The Board found that the BOI process is not intended as, nor does it function as a method to overturn or invalidate other Navy procedures or administrative actions. NJP is non-judicial, the findings, unlike those of a court, are not binding upon the BOI. In your case, the BOI did not find sufficient evidence to warrant a finding of misconduct or substandard performance; however, that does not affect the validity of the NJP findings. It is conceivable and permissible that the two processes with separate considerations and purposes may arrive at different findings. Third, based on the evidence, the Board concluded that there was sufficient evidence for your CO to determine that you violated UCMJ Article 121 and that the awarded punishment was permissible and not unjust. Finally, the Board noted you availed yourself of the opportunity to submit a statement in response to your CO’s DFC request and it was in your record for review by the FY 2018 Lieutenant Commander Promotion Selection Board.

Based on these findings, the Board determined there was no material error or injustice regarding the NJP, PLOR, DFC request, and adverse fitness report to warrant relief and concluded that the entries shall remain in your record. As the adverse documentation remains in your record, the Board also determined there is insufficient evidence warranting re-consideration for promotion to O-4.

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,

7/1/2022



Deputy Director

Signed by:

