



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. 537-22
Ref: Signature Date

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Dear █

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 applications on 9 May 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 applications, 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.

The Board carefully considered your request to remove your 5 August 2020 non-judicial punishment (NJP), and all associated documents, along with your 5 August 2020 Punitive Letter of Reprimand (PLOR). The Board noted that, on 5 August 2020, you received NJP for violation of the Uniform Code of Military Justice (UCMJ), Article 134 (General Article) after posting a criticism of Army and Navy leadership on social media. Consequently, you were issued a Punitive Letter of Reprimand (PLOR) and an adverse Fitness Report. The Board considered your contentions that the NJP was unjustly administered, that it was a biased administering of the UCMJ, that your command should have administered a lesser punishment, and that they decided to make an example of you.

In reviewing the evidence in your case, the Board concluded that Commanding General, 1st Marine Division (CG) acted within his discretionary authority to impose NJP on you for your misconduct. In making this finding, the Board noted that you were afforded all the required due process as required by the applicable regulations and exercised your right to appeal the NJP. Further, the Board considered that there was insufficient evidence to support your allegations that the CG acted with bias or unjustly during the process. The Board also took into consideration that you were informed of the inappropriateness of your social media posting and afforded the opportunity to remove it before refusing to do so. Finally, the Board found that whether to impose NJP or some other non-punitive measure is within the discretionary authority of the Commander. The Board found no evidence that would suggest the CG's actions to impose NJP, rather than a lesser administrative measure, were unreasonable or disproportionate. Ultimately, after considering the totality of the evidence including your character statements, the Board determined there was no error or injustice in the imposition of NJP by the CG. As a result, the Board concluded that your request to remove the NJP and all associated documents, including the PLOR and the adverse fitness report, is not supported by the preponderance of the evidence.

Finally, you also indicated in your application that you are the victim of reprisal. Based on the above findings, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy'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 Navy'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 Navy 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 BCNR 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 BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

6/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]