



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: 617-22
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.

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 10 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, the 1 April 2022, advisory opinion (AO) provided by the Navy Personnel Command (NPC), Office of Legal Counsel (PERS-00J), and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 for promotion to Commander (CDR/O-5) and compensation for back pay. The Board considered your contention that you were purposely placed under investigation to prevent you from being promoted to CDR during the fiscal year (FY) 2017 Nurse Corps promotion cycle. You also contend that your senior nurse was a member of the promotion board and, two weeks after he returned from the promotion board, you were placed under investigation for testing positive for a prescribed sleeping medication. You claim that your non-punitive letter of caution (NPLOC) became a part of the investigation file, you discovered the error after you were informed that your security clearance was being revoked for

violating Uniform Code of Military Justice (UCMJ) Article 112a, your lawyer petitioned to have the entry corrected, and the entry was amended but not removed. You also claim that this incident led you to believe that you were selected for promotion and the entry was placed in your file to prevent you from being promoted.

The Board, however, substantially concurred with the AO that your record remain unchanged. In this regard, the Board noted that you tested positive for Oxazepam and Temazepam and you were issued a NPLOC for ingesting medication after your prescription had expired. The Board found no evidence that you were purposely placed under investigation to prevent you from being promoted to CDR and there is no evidence of your selection for promotion to CDR during the FY 2017 promotion board in your petition, official record, or the FY 2017 CDR promotion board results.

The Board also noted that pursuant to SECNAVINST 1420.3, the Chief of Naval Operations (CNO) shall ensure all officers recommended for promotion to paygrade O-4 through O-7 are screened through existing databases to identify any adverse or reportable information on any officer recommended for promotion. The Adverse Information Memorandum will specify whether or not the adverse or reportable information was considered by the promotion selection board. In addition, SECNAVINST 1420.3 provides that a designee shall notify the officer of the basis for the withhold action and provide him or her with an opportunity to submit matters for consideration by the Secretary of the Navy. Based on these requirements, the Board determined that if you were selected for promotion, you would have been notified of the selection, you would have had the opportunity to submit matters on your behalf, and a record of your selection and withhold or removal from the promotion list would have been included in your official record. In consideration of your contentions, the available evidence, and aforementioned regulations, the Board determined that there is insufficient evidence to warrant promotion to CDR or grant you back pay. 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,

5/31/2022

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Executive Director

Signed by: █