



**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: 999-22  
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.

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, as well as the 18 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 Senior Chief Petty Officer (SCPO/E-8) with back pay and allowance, constructive service for retirement in the pay grade E-8, and inclusion of the Joint Service Commendation Medal to your DD 214. You also request to remove your 30 April 2015 counseling and all adverse material associated with your reassignment during 2015. The Board considered your contention that discrimination and harassment led to your involuntary request for transfer to the Fleet Reserve. You also contend that your new evidence includes memorandums explaining that █ created a hostile work environment, always blamed you for everything, and he ostracized, demeaned, and

harassed you. You further contend that the Navy failed to act on your request to cancel the transfer to the Fleet Reserve. According to MILPERSMAN 1830-040, requests for cancellation of a Fleet Reserve transfer due to advancement selection that will change High Year Tenure (HYT) limits will normally be approved. You argue that these new outcome-altering facts demonstrate that you were harassed, demeaned, and abused while you served in the Navy and despite your best efforts to stop the harassment, it continued it. Based upon this, you also argue that you should be entitled to the requested relief. You claim that ██████████ displayed harassment and toxic leadership on 30 April 2015, by falsely alleging that your lack of attention to detail led to a systematic breakdown in the division and ██████████ blamed you for an incident at the school where a parent was improperly handcuffed. You also claim that the investigation found that the situation occurred because information was not properly communicated and no fault was attributed to you. Further, you were retired even though you wanted to continue to serve in the Navy in a harassment free environment. As evidence, you furnished statements from two former Sailors.

The Board noted that you were issued a Record of Enlisted Counseling by ██████████ on 30 April 2015 for a lack of attention to detail and follow-up that lead to a systematic breakdown within the division. The Board also noted that you were issued a Record of Enlisted Counseling by ██████████ on 28 May 2015 for a lack of attention to detail and loss of confidence among your peers. The entry also noted that your lack of attention to detail could have resulted in injury to many of the Sailors on post and/or the subject of the incident. The Board noted, too, that contrary to your contention that ██████████ blamed you for the incident, the counseling related to the fore mentioned incident was issued by someone other than ██████████. The Board substantially concurred with the AO that since your lack of attention to detail and other behaviors were also identified in a subsequent written counseling that was issued by another Senior Chief, it is unlikely that either was the result of discrimination. The Board determined that the 30 April 2015 and 28 May 2015 counseling entries are valid. The Board found your statement and evidence insufficient to warrant removal of either counseling entry.

Regarding your contentions that you were harassed, the Board substantially concurred with the AO that you did not provide sufficient evidence of discrimination or hostile work environment. The Board noted the statements you provided and determined that your new evidence was insufficient to substantiate your allegations of harassment, discrimination, or a hostile work environment. The Board found no evidence of your efforts to resolve the issue or that you filed complaints about ██████████ at the time of the issue and you provided none. The Board also noted your reference to an Inspector General (IG) investigation, however, according to the 8 November 2020 email between you and a Board examiner, you noted that the complaint was actually filed by the subject who had been handcuffed and not by you. The Board determined that the findings of the IG investigation had no bearing on your chain of commands decision to document your deficiencies related to the incident. Concerning the email between you and the Board examiner, the Board determined that your communication with a Board examiner is a matter of record and did not violate 10 USC § 1556.

Regarding your Enlisted Personnel Action Request to rescind your retirement, the Board noted that your initial request lacked sufficient justification for the Navy Personnel Command (NPC) (PERS-834) to grant your request. The Board also noted that MILPERSMAN 1830-040

provides that, request will be considered on a case-by-case basis. In addition, a number of factors will all be considered, including command recommendation, past performance, manning levels, availability of relief, end-strength, effect on promotions, and critical skills possessed by the member. The Board noted, too, that requests for cancellation of Fleet Reserve transfer due to advancement selection that will change HYT limits will normally be approved. The Board, however, determined that your reliance on the fore mentioned portion of the regulation is misguided. The Board found no evidence that you were selected for advancement to E-8 when you requested to withdraw your transfer to the Fleet Reserve. Therefore, the NPC was under no obligation to consider HYT as a valid basis to grant your request to withdraw your transfer to the Fleet Reserve. The Board also determined that your request for transfer to the Fleet Reserve was properly processed and your request for withdrawal was appropriately denied.

Regarding the addition of your Joint Service Commendation Medal, the Board determined that you provided sufficient evidence, however, the addition of a personal award is an administrative process. You must exhaust your administrative remedies by submitting a request to the Navy Personnel Command (PERS-3) to request a DD Form 215 that includes your Joint Service Commendation Medal.

The Board is not an investigative body and relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based upon the fore going determinations, the Board found your evidence insufficient to overcome this presumption and to warrant your requested relief. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

6/17/2022

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Deputy Director

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