



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: 2016-22
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 21 July 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 25 January 2019 advisory opinion (AO) furnished by the Navy Physical Readiness Program Section (OPNAV N170) and your response to the AO dated 18 March 2021.

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 4 May 2011, you took the Cycle 1-2011 Body Composition Assessment (BCA) and failed. In February 2012, Cycle 1-2012, your record shows a second BCA failure. On 10 November 2013, you received a Page 13 counseling for failing the BCA on 15 October 2013 for Cycle 2-2013. On 12 March 2014, you failed the BCA and received another counseling entry for failing to meet body composition standards for Cycle 1-2014. As a result, you were notified of administrative separation processing for Physical Fitness Assessment failure and elected an

Administrative Separation Board (ASB). On 10 September 2014, you underwent an ASB that unanimously found that the evidence supported the basis for separation (Physical Fitness Assessment (PFA) failures) and recommended your separation from the Navy. On 16 September 2014, your attorney submitted a Letter of Deficiency regarding the ASB. The Commanding Officer (CO) of [REDACTED] submitted an Administration Separation Report, on 6 January 2015, stating that he concurred with the administrative board's findings. On 7 January 2015, you were separated from service with an Honorable characterization of service for weight control failure.

The Board carefully considered your request to remove PFA failures for Cycle 1-2011 and Cycle 1-2012, to overturn the ASB decision to separate, disapprove the decision to separate you from the Navy, and to change your re-entry code on your DD-214.

You argue that your Cycle 1-2011 PFA failure should not have been entered in your record as you were within 10 weeks of arriving at your new duty station and you did not take the Physical Readiness Test (PRT) portion of the PFA. You contend that OPNAVINST 6110.1H states that while a command could order a Sailor to participate in the BCA, the Sailor would not be deemed an official PFA failure if he was within 10 weeks of arriving at his new duty station and did not take the Physical Readiness Test (PRT) portion of the PFA. The Board concurred with the AO that per NAVADMIN 247/09, paragraph D, the command was required to order you to complete a BCA, even if you did not participate in the PRT. Moreover, the Board noted NAVADMIN 247/09 states that Sailors who do not participate in the PRT and exceed BCA standards will be recorded as a PFA failure, and this includes Sailors with less than 10 weeks on board during the official PFA cycle. The Board thus concluded that your Cycle1-2011 is not erroneous and will remain in your record.

You additionally argue that your Cycle 1-2012 PFA failure should be removed because the BCA was not conducted according to standard and was a "courtesy" BCA, and was not intended to be used as an official entry in your record. You included an affidavit from your Leading Petty Officer at the time of the assessment, who states that it was a "courtesy" body composition assessment and that he believed that the BCA was not performed in accordance with the guidelines. The Board noted that the affidavit is almost 10 years after the incident. Moreover, the Board took note that even though your assigned counsel at the ASB stated that a large investigation was conducted regarding the Cycle 1-2012 BCA and numerous Sailors were affected by the errors, you did not present any documentation regarding the investigation at the ASB or with your petition. Therefore, the Board relied on the presumption of regularity to conclude the BCA in question was conducted in accordance with applicable regulations. The Board 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. In making their finding, the Board determined the evidence you presented was insufficient to overcome the presumption in your case.

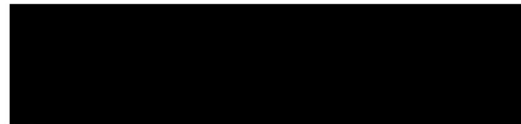
The Board noted that there is sufficient evidence to show that you failed your PFA three times in a four-year period to support the ASB findings and recommendation in your case. The Board concluded that the evidence you provided does not show a material error or injustice with the administrative separation board decision and or the PFA failures in question. Thus, the Board

determined both shall remain in your record. Consequently, the Board determined there is insufficient evidence to justify a change to your re-entry code on your DD-214 or disapprove your separation from the Navy. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

8/15/2022

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Executive Director

Signed by: 