



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

█  
Docket No: 2888-22  
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 11 August 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 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 Fiscal Year (FY) 2021 Active-Duty Navy Lieutenant Commander (LCDR) Line (Intelligence) Promotion Selection Board selected you for promotion. On 17 April 2019, military police at █ responded to a call from your spouse regarding an allegation of domestic violence. On 8 July 2019, an Incident Determination Committee (IDC) substantiated physical abuse of a spouse by you and recommended a 26-week offender treatment program. On 26 July 2019, the Commander Naval Surface and Mine Warfighting Development Center issued you a Letter of Instruction (LOI) but determined no additional administrative or punitive actions were required. Subsequently, Commander, Navy Personnel Command (CNPC) notified you that your promotion would be withheld due to pending review of the allegation. The Chief of Naval Operations recommended, and the Secretary of the Navy (SECNAV) approved, removal of your name from the FY21 Active-Duty Navy Lieutenant Commander Line (Intelligence) promotion list on 24 February 2022. On

28 February 2022, CNPC notified you of your removal from the promotion list and the fact that this constituted your first failure of selection (FOS). In response, you provided a statement to Chief of Naval Personnel (CNP) outlining your arguments against your removal and requesting to be reinstated to the promotion list.

The Board carefully considered your request to remove the CNPC letter and enclosures from your official military personnel file (OMPF) and to restore your selection to LCDR. You argue that it was erroneous to add adverse information into your OMPF and your removal from the promotion list was unjust since you received no derogatory information from your command, included no adverse fitness report. You reiterate arguments raised in your letter to CNP and contend that your husband suffered from a PTSD episode that was misinterpreted as a domestic dispute and that the military police from Fort Huachuca determined the allegation was unfounded. In addition, you argue the incident was a minor infraction and was exempted from inclusion in your OMPF by DoDI 1320.04.

The Board noted that it does not have the authority to reinstate your promotion but may remove your failure of selection (FOS). However, the Board considered that the information regarding the domestic assault allegation was not available to the FY21 Active-Duty Navy Lieutenant Commander Promotion Selection Board at the time the board convened. The Board further noted that per SECNAVINST 1420.3, SECNAV has the authority to determine whether an officer is fully qualified for promotion to the next higher grade and whether that officer has met the exemplary conduct requirement of Title 10 U.S.C. §5497. After reviewing the facts of your case, SECNAV determined your behavior was “inconsistent with the exemplary conduct expected of all naval officers.” Therefore, the Board determined SECNAV acted within his discretionary authority to remove you from the promotion list and your FOS should remain in your record.

Further, the Board noted that SECNAV has the authority to determine whether the memorandum removing your name from the FY21 Active-Duty Navy Lieutenant Commander promotion list would be entered into your OMPF. This decision was made consistent with the applicable regulations. The fact you disagree with SECNAV’s decisions in your case did not make his actions erroneous or unjust. The Board considered the fact you were provided an opportunity to submit a statement in response to SECNAV’s actions and you exercised your right. Therefore, the Board found that you were properly afforded the due process required by regulation and the fact you were not issued any additional adverse material by your command was not persuasive evidence of an injustice. Consequently, the Board determined that the adverse material was not unjustly entered and shall remain in your OMPF. 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,

8/17/2022

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Executive Director

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