



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

█  
Docket No: 3287-22

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 12 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 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.

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 █. The Board considered your contention that if not for the disability you sustained while serving in a combat zone you would have been selected for promotion and retired as a █. You also contend that under 10 USC § 1372, any member of the armed forces who is retired for physical disability is entitled to the grade to which he would have been promoted had it not been for the physical disability for which he was retired and which was found to exist as a result of a physical examination. You argue that your record demonstrates excellent leadership capabilities, expertise, service to the community, and dedication to the Navy. You claim that you were considered for promotion to █ during March 2019, but failed selection. You also argue that

under the law and equitable standard, you should have been retired at the grade [REDACTED], as this is the grade to which you would have been promoted had it not been for your disabling injury stemming from your honorable service and the subsequent timing of your involuntary medical retirement.

The Board, however, determined that your reliance upon 10 USC § 1372 (subsection 3) is misguided. In this regard, the Board noted that SECNAVINST 1420.3 provides that, "Commissioned officer promotions are discretionary. An officer does not have a right to be promoted." The Board also noted that your petition indicates that you were considered for promotion to [REDACTED] during 2019 and you were not selected for promotion. The Board found no evidence that you failed selection due to your physical disability and you provided none. The Board determined that entitlement to promotion, first requires you to have been selected for promotion to the next higher grade by a promotion selection board. Next your record must have been screened for adverse or derogatory material, added to the list of nominations for promotion, approved by the President, and confirmed by the Senate. The Board found no evidence of the aforementioned requirements and you provided none. The Board also determined that absent evidence of your selection for promotion, there is no entitlement to promotion under 10 USC § 1372 (subsection 3). 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,

7/20/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]