



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

██████████
Docket No. 3675-22
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.

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 applications on 2 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 this Board. Documentary material considered by the Board consisted of your applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the Advisory Opinion (AO) provided by the Office of Legal Counsel (BUPERS-00J) and your response to the AO.

The Board carefully considered your request for reinstatement to Senior Chief Petty Officer with a time in rate advancement of 2018. The Board considered your contention that the Administrative Separation Board found the allegations false and dropped all charges except for fraternization.

On 14 February 2018, Commanding Officer (CO), ██████████ imposed nonjudicial punishment (NJP) on you for violations of Articles 92 and 107. You were issued a Punitive Letter of Reprimand and your advancement to E-8 was withdrawn. The Board noted that you did not appeal the NJP and acknowledged the Page 13, recommendation of advancement withdrawal.

On 20 March 2018, you received notice that you were being processed for administrative separation (ADSEP) for commission of a serious offense based on your NJP. On 4 June 2018, the ADSEP board determined that a preponderance of the evidence supported the basis for fraternization but recommended your retention in the Navy. The ADSEP board did not find

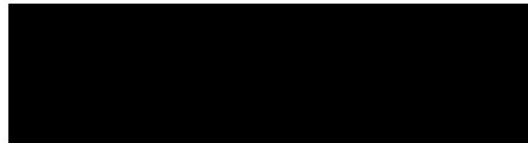
sufficient evidence to support the sexual harassment basis for misconduct. Based on the recommendation of the ADSEP board, you were subsequently retained in the Navy at the paygrade of E-7.

Based upon their review, the Board determined you failed to establish a material error or injustice exists with your advancement withdrawal. In making this finding, the Board substantially concurred with the AO. Specifically, the Board determined your NJP for fraternization, by itself, was sufficient grounds for your CO to withdraw your advancement recommendation to E-8. The Board noted that your fraternization misconduct was substantiated by the ADSEP board and is a serious offense, regardless of whether or not it was sexual in nature. As a result, the Board found your CO acted within his discretion to remove your advancement to E-8 and you provided insufficient evidence of error or injustice to set aside the decision. 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,

8/24/2022

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Deputy Director

Signed by: 