



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: 4044-22

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 19 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.

The Board carefully considered your request to set aside the administrative separation (ADSEP) board's finding of adultery and to reverse the Navy Personnel Command's (NPC's) decision not to set aside your misconduct. You also request promotion to Chief Petty Officer (CPO/E-7), or a special selection board (SSB), or a new ADSEP board. The Board considered your contention that at every turn the process has been erroneous. Specifically, contend that you filed a restricted report the next business day after you were sexually assaulted, that the Navy Criminal Investigative Service (NCIS) investigation was one-sided since NCIS did not investigate your allegation of sexual assault, that the ADSEP board process was erroneous based on their finding of adultery, and NPC's decision to maintain the finding for adultery the remove your selection to CPO was unjust.

The Board noted that your ADSEP board unanimously found that the preponderance of evidence supported the basis for adultery, but did not find that the preponderance of evidence supported the basis for sexual assault. In consideration of the available evidence, the Board found no error in the ADSEP board process or in ADSEP members finding that the preponderance of evidence supported adultery. 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. The Board found your evidence insufficient to overcome this presumption. In making this finding, the Board noted that you did not provide any new evidence that was not considered by the ADSEP board.

Concerning your promotion to CPO, the Board noted that according to BUPERSINST 1430.16G, the Chief of Naval Personnel is the sole authority for the advancement of personnel to paygrades E-7 through E-9 and the sole authority for the removal of enlisted personnel selected for advancement to E-7 through E-9 from a selection board list. As such, the Board determined that the Chief of Naval Personnel acted within his discretion authority when deciding to disapprove your advancement to E-7 based on an ADSEP board finding that you committed adultery. The Board again relied on a presumption of regularity in making this determination and found your evidence insufficient to overcome the presumption.

You also indicated in your application that you were the victim of sexual assault. After a review of the evidence, the Board determined that there was insufficient evidence to conclude you were the victim of sexual assault. Furthermore, the Board found no evidence to substantiate your allegation that the NCIS investigation was not properly conducted or did not consider your allegation of sexual assault. The NCIS report of investigation from 6 January 2020 documents their investigative efforts of obtaining text messages between you and the other servicemember in which you purportedly admit to having consensual sex with the alleged perpetrator. Based on this evidence, the Board found NCIS acted reasonably in conducting their investigation. Based on these factors, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting a change to the ADSEP board findings or NPC's decision in your case. As a result, the Board found no basis to promote you to E-7, direct a SSB, or convene a new ADSEP board. 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,

7/29/2022

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Deputy Director
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