



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

██████████
Docket No. 4071-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 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 to remove your Evaluation Report & Counseling Record (Eval) for the reporting period 16 November 2013 to 3 December 2013, the Court Memorandum entry of 12 December 2013, the restoration of all rights and privileges as a result of the Nonjudicial Punishment (NJP) administered on 2 December 2013, and the restoration of back pay and allowances associated with the NJP. The Board considered your contention the documentation for NJP is incomplete, insufficient, or missing in accordance with all applicable policies and regulations. The Board also considered your assertion that BCNR Docket No. 836-14 was a comparative case in which BCNR granted relief.

On 2 December 2013, Commanding Officer, USS Tortuga administered NJP to you for Violation of Article 92, Failure to obey an order or regulation on or about 28 August 2013. As a result, you were reduced in rank to BM2 (E-5) and issued the contested adverse Eval. You signed the Eval, on 13 February 2014, and chose not to make a statement.

The Board determined insufficient evidence of error or injustice exists to support removal of the NJP or Eval in question. 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. The Board determined your assertions of error were insufficient to overcome the presumption that your CO properly administered NJP in your case and appropriately documented the NJP with the Eval. While the Board noted the previous Board case, it concluded it was not probative to your case since the Petitioner in that case filed an application with the Board in a timely manner that allowed for the review of command NJP documents. In your case, an eight-year lapse in time between your NJP and your application to this Board necessitated the Board's application of the presumption of regularity since commands are only obligated to maintain NJP records for two years. As a result, the Board concluded the NJP and Eval shall remain in your record and no basis exists for restoration of rights, privileges, pay, or allowances associated with the NJP or Eval. 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,

8/25/2022

