



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. 4504-22
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 8 November 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of 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 also considered the 26 August 2022 Advisory Opinion (AO) provided by the Office of Legal Counsel (BUPERS-00J) as well as your 9 September 2022 rebuttal.

The Board carefully considered your request to remove your nonjudicial punishment (NJP) held on 18 May 2001, reinstate your rate to IT1, and change your reentry code from RE-4 to RE-1 on the bases of legal error and injustice. Specifically, you contend that the NJP is in error because your actions were not sexual in nature and did not constitute severe or pervasive conduct in violation of law, regulation, or Article 15, Uniform Code of Military Justice (UCMJ). You argue that if exculpatory evidence regarding one of the victims had been considered by your commanding officer (CO), it would have resulted in the dismissal of the charges against you. You also argue that relief should be granted as a matter of justice due to the disproportionate impact of disciplinary proceedings against African American service members.

The Board noted that you were found guilty at NJP for violation of five specifications of Article 92, UCMJ; specifically, wrongfully sexually harassing two female service members. You were awarded a reduction in rate to E-5/IT2, forfeitures of pay for two months, and restriction and extra duty for 45 days, the latter two being suspended for six months. The Board noted that prior to the imposition of NJP, you were advised of your Article 31, UCMJ rights. You voluntarily, knowingly, and intelligently gave up your right to consult counsel, and you accepted NJP in lieu

of trial by court-martial, subject to appeal. On 20 May 2021, you appealed your NJP, contending that the punishment awarded to you was unjust and disproportionate, and that you were not guilty of the offenses. Your appeal was referred to a judge advocate for consideration and advice, and on 14 June 2021, Commander, Naval Medical Forces [REDACTED] determined that the punishment imposed was neither unjust nor disproportionate. Accordingly, your appeal was denied.

While the Board carefully considered your rebuttal evidence, the Board substantially concurred with the AO that your CO exercised proper authority in imposing NJP based on the evidence obtained during the investigation, and that the preponderance of the evidence supports the guilty findings. Despite your assertion the CO failed to consider or did not receive purported new exculpatory evidence, the Board disagreed with your assertion that the CO would not have imposed NJP had he known about this information. In this regard, 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 sufficient evidence to the contrary, will presume that they have properly discharged their official duties. The Board thus determined that the CO's actions were correct and proper, and your evidence did not overcome this presumption.

With regards to your claim that the outcome of the NJP was racially biased or motivated, the Board concluded this contention lacks merit. You provided no evidence, other than your subjective statement, that the CO imposed a harsher punishment because you are African American. Moreover, the Board noted that the NJP proceedings are administratively and procedurally correct in accordance with the applicable Manual for Court-Martial. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting the requested corrective action. 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,

12/6/2022

[REDACTED]

Executive Director

[REDACTED]