



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: 4536-22

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 27 September 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, as well as the 15 July 2022 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (BUPERS-00J) and your response to the AO.

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 to remove your 12 June 2019 Report and Disposition of Offenses/non-judicial punishment (NJP), associated NJP documents, and fitness report for the reporting period 16 November 2018 to 15 November 2019. The Board considered your numerous contentions regarding the NJP process and awarded punishment. You also contend that your request for court-martial was not considered, facts were ignored, the Commanding Officer (CO) did not apply the reasonable person standard to determine if "the wink" was a sexual gesture, and your CO abused his authority by deterring a potential witness from participating in the investigation process. Further, you contend that the administrative separation (ADSEP) board was not impartial or fair, the Recorder brought up every charge as if they were not dismissed during NJP, which negatively impacted the perception of the board

participants. You claim that the awarded punishment was unjust, you are not guilty of the offenses, your dismissal of the charges was because the female sailors' statements were contradictory, there was a lack of evidence, but most important you proved your innocence during NJP. During the NJP and appeal process, there was nothing you could have done or said because the CO's decision was already made before the NJP. The Board considered your assertions regarding the credibility of the female sailors and Commander (CDR), Carrier Strike Group █ endorsement to your NJP appeal.

The Board noted that while you were assigned aboard the █ seven junior female sailors accused you of sexual harassment or inappropriate sexual touching during the period of February 2018 until June 2018. The Board also noted that the Chief Master at Arms (CMAA) and Naval Criminal Investigative Service (NCIS) conduct investigations into the allegations of sexual harassment. The Board noted, too, that prior to receiving NJP, five of the seven sailors declined to participate beyond the statements provided during the course of the investigation. Finally, the Board noted that you were afforded the opportunity to provide a statement as part of the investigation process but exercised your right to remain silent.

The Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 120 (abusive sexual contact) and Article 92 (failure to obey a lawful general order), specifically, OPNAVINST 5300.13 Navy Sexual Harassment Prevention and Response Program Manual. The Board also noted that at the time of the investigation and the NJP, you were assigned aboard the █. As such, the *Manual for Courts-Martial* (MCM) (2016 ed.) Part V, paragraph 3. Right to demand trial provides that, "*Except in the case of a person attached to or embarked in a vessel, punishment may not be imposed under Article 15 upon any member of the armed forces who has, before the imposition of non-judicial punishment, demanded trial by court-martial in lieu of non-judicial punishment. . . A person is "attached to" or "embarked in" a vessel if, at the time non-judicial punishment is imposed, that person is assigned or attached to the vessel . . .*" The Board determined that the Commander, Destroyer Squadron █ acted appropriately in his capacity as the higher headquarters for the █ and his decision that your CO would adjudicate your misconduct was not an error. The Board also determined that pursuant to the MCM your CO acted within his discretionary authority to take the action that he deemed appropriate based upon the preponderance of evidence. In this case, your CO relied not only upon the statements of the sailors, he also relied upon the investigations conducted by the CMAA and NCIS. Moreover, the five sailors' decision not to further participate in the process is not tantamount to a retraction of their statements, because in-person testimony is not required at NJP and your CO was not precluded from considering their statements when considering your culpability. The Board further determined that your NJP was conducted according to the MCM, the sentence awarded was appropriate and within statutory and legal guidelines.

Concerning your assertions regarding the credibility of the sailors, the Board substantially concurred with the AO that the credibility of the sailors' statements, in addition to the findings of the investigations were examined during the ADSEP board and the ADSEP board members determined that the statements were credible. The Board found your evidence insufficient to determine that the sailors were not credible. Regarding your assertion that a witness was prohibited from being involved in the investigation process, the Board noted the sailors'

statement, but found your evidence insufficient to support your assertions or to conclude that your CO violated any order or regulation.

Concerning your contentions regarding the CDR, CSG5 endorsement to your appeal and the ADSEP board process, the Board determined that although the five specifications for violating Article 120, UCMJ were dismissed at NJP, the statements of the sailors constituted an official part of the Record of Investigation and were thus relevant to the NJP, your appeal, and the ADSEP board processes. The Board also concurred with the AO that your CO's decision to dismiss the five specifications at NJP and the sailors decision to decline to participate further did not mean the events did not occur. The Board determined that your ADSEP board was not conducted in error and noted that your chain of command and the ADSEP board members found that the sailors' statements described similar misconduct and the statements were consistent on how the events transpired. Moreover, 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 found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the documents in question from your record. 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,

10/6/2022

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Executive Director
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