



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: 5185-22
Ref: Signature Date



Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 25 October 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 23 August 2022 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (PERS-00J). The AO was provided to you on 16 September 2022 and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 15 November 2019 Report and Disposition of Offense(s)/non-judicial punishment (NJP), Punitive Letter of Reprimand (PLR), Preliminary Inquiry (PI), fitness report for the reporting period 17 August 2019 to 31 January 2020, Field Code 17, and all derogatory information pertaining to the misconduct that was the subject of your Board of Inquiry (BOI). The Board considered your contention that the BOI exonerated you of misconduct because the investigation contained substantial false and misleading information. You also contend that the PI was factually incorrect and contained

grossly misleading statements from non-credible witnesses. You claim that the derogatory material resulted in the denial of your promotion to Lieutenant Commander (LCDR) and will prejudice you in the future. You also claim that you have the support of your chain of command. As evidence, you provided correspondence recommending favorable consideration.

The Board, however, substantially concurred with the AO that your record should remain unchanged. In this regard, the AO noted that the PI substantiated allegations of fraternization between you and an enlisted member. The Board noted that you received NJP for violating Article 134, Uniform Code of Military Justice (UCMJ) for knowingly fraternizing with an enlisted member from September 2019 to October 2019. Your Commanding Officer (CO) found you guilty and awarded you a punitive letter of reprimand. The Board also noted that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, you did not submit written matters for consideration, and you did not appeal your CO's finding of guilt at NJP. The Board determined that your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined that when making the decision to impose NJP, the CO relied on a preponderance of evidence that substantiated the allegations of misconduct.

The Board also noted that your BOI unanimously found that the preponderance of evidence did not support the basis for separation. The Board determined that, according to 10 U.S.C. § 1182, BOIs are convened to make findings and recommendations as to whether an officer should be retained on active duty. The BOI also allows a respondent to present matters favorable to their case. The BOI does not determine guilt or innocence and the findings of your BOI are not binding on the CO, just as the CO's determination at NJP was not binding on the BOI. The Board determined that awarding NJP is separate and distinct from the BOI results. Moreover, each were independent fact-finding bodies entitled to come up with their own conclusions based on the facts. The fact that the BOI came to a different conclusion does not in any way detract from the validity of the CO's decision.

Concerning your contentions regarding the PI, the Board found no evidence that the investigation was not conducted according to regulations. Regarding your request to remove your contested fitness report, the Board determined that your fitness report is valid. In making this finding, the Board noted that your fitness report documented your NJP and determined that the Navy Performance Evaluation System Manual allows the reporting senior (RS) to document concluded NJP cases where there has been a finding of guilt and the awarding of punishment. The Board also noted that you acknowledged the fitness report and indicated that, "I do not intend to submit a statement." The Board further determined that your decision not to make a statement indicates that you understood the basis for the fitness report.

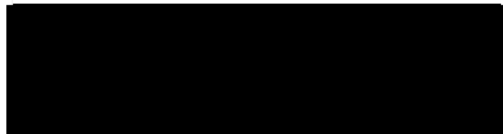
In conclusion, while the Board considered the correspondence from your chain of command, the Board relied on a presumption of regularity to presume that all the public officials involved in the investigation and adjudication of your misconduct properly discharged their official duties. The Board carefully considered the totality of evidence, and found that you did not meet the burden of proof to overcome the presumption of regularity attached to the official actions of these Navy officials. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of any of the documents or the Field

Code 17 from your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

11/9/2022



Executive Director

Signed by:

