



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. 5315-22
Ref: Signature Date



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 15 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. The Board also considered the 3 August 2022 advisory opinion (AO) furnished by Navy Personnel Command, Office of Legal Counsel (BUPERS-00J) and your rebuttal response.

The Board carefully considered your request for reinstatement to the rank of E-7 with a corrected time in rate of 1 September 2018. You contend your record does not contain "official documentation" reflecting your reduction in rate, so your rank should be reinstated. You further contend that despite multiple requests and attempts since your nonjudicial punishment (NJP) more than three years ago, you have not been able to obtain the requested documentation. When the documentation was provided by the Board Examiner for your review, you requested that the documentation provided by the Commanding Officer (CO) that administered the NJP not be considered because it was not "processed officially" and "there is no chain of custody" showing it is the "official documentation." You also requested the documentation not be allowed to be placed in your official military personnel file (OMPF).

The Board, however, substantially concurred with the AO, and determined there is insufficient evidence to overcome the presumption of regularity attached to the Navy's official actions. As discussed in the AO, the command complied with the required steps for withdrawing your advancement to Chief Petty Officer by issuing the adverse Evaluation Report & Counseling Record (EVAL) for the reporting period 8 December 2018 to 15 January 2019. The Board noted the "significant problems" EVAL, which was "submitted upon withdrawal of advancement recommendation to Chief Petty Officer," was signed by you on 22 January 2019. Concurring with the AO and noting Navy Personnel Command (PERS 803) had retained a copy of the adverse EVAL, the Board concluded the clerical error which resulted in the EVAL not being uploaded to your OMPF was not material because you acknowledged the EVAL and would have been provided a copy of it. The Board also noted you did not dispute the NJP nor did you provide evidence justifying the NJP be overturned. Thus, the Board substantially concurred with the AO and concluded there was insufficient evidence of a material error or injustice warranting your reinstatement to the rank of E-7. Further, the Board found no basis not to include the adverse EVAL in 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,

10/18/2022

