



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

█  
Docket No: 5351-22  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 2 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

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 26 September 2019 Court Memorandum/non-judicial punishment (NJP) and to reinstate your pay grade to E-6. Alternatively, you request to be awarded constructive service credit towards retirement. Finally, you request back pay from the date of your separation. The Board considered your contention that the command legal advisors recognized the lack of evidence to support the allegations. After the investigation concluded, the command declined to prosecute your case at a court-martial. The Board also considered your assertions that given its own admission about the lack of probable cause, the command should not have initiated separation proceedings, and the administrative separation (ADSEP) board came to the correct conclusion that the evidence did NOT support the allegations by a preponderance of the evidence. You also assert that you

should not have been denied continued service based on allegations that were unsubstantiated at the ADSEP board, nor should the record of NJP persist in light of the ADSEP board's findings.

The Board, however, determined that your NJP is valid. In this regard, the Board noted the Naval Criminal Investigative Service (NCIS) conducted an investigation into several claims that you sexually assaulted three service members. As a result, you received NJP for violating Article 128, Uniform Code of Military Justice (UCMJ) for assaulting a commissioned officer, by grabbing her hips and forcing her to sit on your lap, and for assaulting a Sailor by pressing your groin against her buttocks. The Board also noted that you acknowledged your Article 31, UCMJ Rights, certified that you were given the opportunity to consult with a military lawyer, and acknowledged your right to appeal the NJP. Although you did not appeal your commanding officer's (CO's) finding of guilt at NJP, you did submit a request to set-aside your NJP, and your request was denied. In consideration of the available evidence, the Board determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.). The Board also determined the command's decision that there was insufficient evidence to refer your case to court-martial, did not prohibit your CO from imposing NJP. In addition, it was not an error or injustice for your CO to conclude that there was sufficient evidence to find you guilty at NJP and to direct your appearance before an ADSEP board.

The Board noted that your ADSEP board unanimously found that the preponderance of evidence did not support the basis for commission of a serious offense. However, the Board determined that NJP and an ADSEP board are separate processes with specific functions. Specifically, an ADSEP board is administrative in nature with the fundamental purpose of determining your suitability to continue to serve, while NJP is disciplinary in nature. Because their fundamental purposes are different, the Board found that it is not a material error or injustice for two separate fact-finding bodies to arrive at different conclusions. Based on this finding, the Board determined that the findings of your ADSEP board do not invalidate your CO's finding of guilt at NJP. As the factfinder at NJP, the Board concluded the CO was free to weigh the evidence and resolve any inconsistencies as he or she saw fit. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your NJP. Therefore, the Board found no reasonable basis to reinstate your paygrade to E-6, award your back pay, or grant you constructive credit for retirement. 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,

8/16/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]