



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

█
Docket No. 6112-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 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 26 August 2022 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32). The AO was provided to you on 1 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 did not 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 fitness reports and Performance Summary Reports (PSRs) for the reporting periods 7 July 2018 to 31 October 2018 and 1 November 2018 to 3 September 2019. You also request to replace the contested fitness reports with a fitness report the reporting period 7 July 2018 to 1 August 2019 and letter extension ending 3 September 2019, or a not observed (NOB) fitness report for the reporting period 2 August 2019 to 3 September 2019. The Board considered your contentions that the ranking

board was not conducted according to the Defense Health Agency Administrative Instruction 100 or SECNAVINST 1402.1. At the time of the ranking boards, you were not yet a Commander (CDR/O-5) and you are not sure if you were considered by the O-4 or O-5 ranking board. You also contend that if you were considered by either ranking board, the boards would have had knowledge that your rank was an O-4. You argued that this significantly and unjustly disadvantaged you and is inconsistent with regulations. You claim that according to regulations, an officer recommended for selection or non-selection by a selection board will be treated as if the original board either selected or non-selected that officer.

The Board, however, substantially concurred with the AO that your fitness reports are valid. In this regard, the Board noted that according to the Navy Performance Evaluation System Manual (EVALMAN), your Periodic/Regular fitness report ending 31 October 2018 was required. During the reporting period you served in the rank of LCDR and the reporting period ended before your promotion to CDR was granted. The Board also noted that your Detachment of Reporting Senior/Regular fitness report ending 3 September 2019 indicates your grade/rate as CDR. The Board determined that the EVALMAN does not require the submission of a closeout report due to retroactive promotion. The Board found no evidence that the ranking boards were not conducted according to regulations and you provided none. The Board also determined that there is no merit to your claim that you were somehow disadvantaged by the ranking boards. The Board further determined that your fitness reports were processed according to regulations and there are no regulatory or statutory provisions that require fitness reports to be replaced due to retroactive promotion. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

10/28/2022

█

Deputy Director

Signed by: █