



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: 6319-22
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.

The Board carefully considered your request for promotion to Commander (CDR/O-5). The Board considered your assertion that you served honorably with no other instances of substandard performance of duty and you received high praise from the raters on your fitness reports. You contend that your fitness reports prior to the detachment for cause (DFC) and your subsequent fitness reports emphatically stated that you should be promoted immediately and that you were a superior leader. You further contend that because you were removed from the promotion list and were not promoted to CDR, you were forced to retire after 32 years of active service. You assert that there is also proof of a similarly situated Lieutenant Commander (LCDR) who received a DFC, but instead of being removed from the promotion list the LCDR was allowed to be promoted to CDR and to continue his career beyond 30 years. You assert that this demonstrates you were the victim of a material error of discretion because the decision to remove you from the promotion list was made arbitrarily and capriciously. You also assert that the recommendation to remove your name from the promotion list was erroneous because it was based on a perceived lack of trust and confidence, the DFC was in November 2014, the recommendation to remove your name from the promotion list was over two years later, and

there was ample time to observe that you continuously exhibited stellar performance after the DFC and received high scores on fitness reports directly before the recommendation to remove your name. You claim that it was an injustice to end your career after one bad fitness report. You argue that this purported injustice is especially present given that the Commanding Officer (CO) over reacted and requested your DFC after only 87 days of observing you and without giving you the opportunity to correct and improve your level of performance.

The Board, however, substantially concurred with the two previous Board panel decisions that your promotion to CDR is unwarranted. In this regard, the Board noted that you assumed the duties as the squadron maintenance officer during September 2013, on 19 September 2014 you received a Letter of Instruction (LOI) counseling you on numerous discrepancies within your department. The LOI provided recommendations for corrective action and your CO allowed you six weeks to make “significant and meaningful” progress. The Board also noted that your fitness report for the reporting period 8 August 2014 to 31 October 2014 noted that program reviews revealed that over one third of all Naval aviation maintenance programs need attention or were off track; in less than three months there were six incidents of things falling off aircraft attributed to maintenance and at least three instances of components being incorrectly installed on aircraft; and due to the maintenance department’s poor performance, the squadron ceased flight operations on all aircraft. In addition, on the first 11 aircraft inspected, 103 safety-of-flight or material condition discrepancies requiring maintenance action were revealed. Your Reporting Senior concluded that he had no confidence in your ability to serve as an aviation maintenance officer. The Board noted, too, that during November 2014, your CO requested your DFC, and he provided a comprehensive justification to support his request, and on 28 April 2015, the Chief of Naval Personnel Command approved your DFC. In addition, your DFC was documented in your fitness report for the reporting period 1 November 2015 to 29 June 2015. The Board determined that despite the timeframe of your CO’s observation, it was sufficient time to identify and document the substandard performance of your section. The Board also determined that as the squadron maintenance officer for several months before your CO’s arrival, you had ample opportunity to correct the previously identified discrepancies and deficiencies in your department.

The Board found your contention that it was unjust to end your career after one bad fitness report to be without merit. The Board noted the Chief of Naval Operations memo to the Secretary of the Navy (SECNAV) and determined that “one bad fitness report” was not the basis for the loss of trust and confidence or not recommending your promotion to CDR, ultimately, it was your substandard performance by allowing unsafe aircraft to be declared safe for flight. The Board also noted the previous Board panels properly adjudicated your numerous contentions, and duly noted that “the Board found the evidence was insufficient to establish the existence of probable material error *or injustice*” (emphasis added). Similarly, this Board determined that the SECNAV’s decision to remove your name from the promotion list was not an injustice. You were afforded due process, the SECNAV reviewed all available material, including your previous fitness reports and acted both appropriately and within his discretion when deciding to remove based upon the severity of your substandard performance.

Concerning your retirement from active service, the Board determined your mandatory retirement was not an injustice. In this regard, the Board noted that pursuant to 10 U.S.C. §

6383, as a limited duty officer in the grade LCDR with more than thirty years of active service, your retirement was due to statutory requirements.

Concerning your assertion of a similarly situated LCDR who received a DFC, but was allowed to be promoted and continue his career beyond 30 years, the Board determined that while your cases may have involved similarities (i.e., DFC and promotion delay); each case is considered based upon the totality of evidence, and the individual merits of each case. The Board found no evidence that you were the victim of a material error of discretion or that the SECNAV's decision was made arbitrarily and capriciously. 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

10/28/2022

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Deputy Director

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