



**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. 6451-22  
Ref: Signature Date

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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 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 applications on 22 November 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the Advisory Opinions (AO) provided by Navy Personnel Command (PERS-32) and (PERS-80), and the Office of Legal Counsel (BUPERS-00J), as well as your 25 October 2022 rebuttal.

The Board carefully considered your request to remove your Evaluation Report & Counseling Record (Eval) for the reporting period 9 September 2021 to 15 November 2021 and all related materials from your record as well your request for reinstatement to Chief Petty Officer (CPO) by the FY 2022 Active Duty Advancement Selection Board.

The Board noted that, on 6 October 2021, you tested positive for amphetamines on a command urinalysis testing. When counseled by the Recruit Training Command Legal Department of charges and subsequent Commanding Officer (CO) of nonjudicial punishment (NJP) proceedings, you refused NJP. A court martial inquiry was submitted for trial and a recommendation of no prosecution was returned. Consequently, on 21 October 2021, the CO issued an Administrative Remarks NAVPERS 1070/613 (Page 13) withdrawing your advancement to CPO due to adverse or reportable information. You signed the Page 13 acknowledging that your advancement was withheld and your rights to redress as provided under the Uniform Code of Military Justice, Article 138. On 15 November 2021, you received a Special Eval recommending your advancement to CPO be withdrawn due to the CO's loss of

confidence. Finally, on 31 March 2022, your CO sent you to an ASB. The ASB found the preponderance of the evidence did not support the basis for separation.

The Board considered your contention that the Eval and the withholding of your advancement to CPO are no longer applicable due to the administrative separation board's (ASB's) finding of no misconduct. You contend that based upon the ASB's finding of no misconduct, your Special Eval should be removed from your record. The Board also considered your claim that the request to withdraw your advancement was not in accordance with BUPERS Instruction 1430.16, because the request occurred after your advancement had already been withdrawn, making removal of your selection invalid, and that you were not briefed on the Eval until 11 January 2022. The Board also considered your claim that there are no adverse actions pending against you, and that the CO who withheld your advancement and signed the Special Eval was relieved of command due to lack of confidence.

The Board, however, substantially concurred with the AOs that the contested Special Eval is valid. The Board noted that BUPERS Instruction 1610.10D allows a reporting senior to submit a Special Eval if needed to withdraw an advancement recommendation. It further states that a Special Eval may be submitted if the reporting senior believes that facts should be placed on the record before the next occasion report. In this case, the Board noted that the reporting senior submitted the adverse Eval and withdrew your recommendation for advancement to CPO due to loss of confidence. The Board also concurred with the BUPERS 00J AO that an ASB is administrative in nature with the fundamental purpose of determining your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance. Further, the Board determined that although the ASB and BUPERS recommended retention, their decision does not invalidate the adverse Eval nor does it remove the fact that misconduct was clearly established. Finally, the Board concurred with the PERS-32 AO that the reporting senior acted within his authority to remove the advancement recommendation based on misconduct and the Eval is valid as written and filed.

You further contend that, because the CO who issued the Special Eval and withdrawal for advancement was subsequently relieved of command, you should be advanced. In this regard, the Board determined that the relief of your former CO does not nullify or undo a former CO's actions which he had the authority to take. Further, the Board noted that only those actions that were improper may be undone and the former CO was within his purview to withdraw your advancement. Finally, the Board noted that you provided no evidence or argument that the CO abused or acted outside his authority.

Finally, in regards to your contention that you were not timely briefed regarding the withdrawal of your promotion lacks merit. The Board concurred with the AOs and noted that there is not a briefing requirement when such a change occurs. Further, the Board noted that although you did not sign the Special Eval until 13 January 2022, you were clearly aware of the CO's intent to withdraw your advancement as evidenced by the Page 13 counseling which you signed on 21 October 2020. The Board noted that you acknowledged the withholding of your advancement as well as your rights to redress as provided under the UCMJ, Article 138. Thus, the Board concluded that you did not furnish sufficient evidence demonstrating probable material error or injustice warranting corrective action.

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 the submission of new matters which will require that you 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,

12/22/2022



Deputy Director

