



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

█  
Docket No. 6616-22  
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 29 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 determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully reconsidered your request for reinstatement to active duty with retroactive reinstatement of all entitlements, removal of an adverse evaluation report & counseling record (EVAL) and issuance of a letter of continuity, removal of all related derogatory information from your Official Military Personnel File (OMPF), and advancement to E-5 with a time in rate effective 19 March 2019. You again contend your discharge was found to be unjust by the Naval Discharge Review Board (NDRB) and your requested relief is warranted because you should not have been discharged from naval service. Specifically, you contend your administrative separation was unjust for numerous reasons: 1) Due to a lack of communication, you were unaware of the new uniform inspection date and time; 2) Circumventing the Yeoman Senior Chief wasn't a violation of an order "in itself" due to the Chief Warrant Officer being next in line in your chain of command; and 3) You never "made, signed, or forged" an official document nor is there sufficient evidence to prove otherwise. You also contend the administrative separation was vindictive because the "command was frustrated with [you] requesting GCMCA and added

another offense.” In support of your reconsideration request, you submitted new evidence, a letter from the [REDACTED] Legal Officer certifying that “[Assistant Admin Officer ltr 1000 Ser00/486 dtd 6 Jul 18] submitted by [Petitioner] is a certified copy. The original document is on official water marked paper.” Additionally, you submitted a new advocacy letter from your current Commanding Officer (CO), which recommends the administrative actions taken against you be vacated “on the grounds the proceedings were done without evidence and failed to follow procedure.” Specifically the CO states that in “[his] review of the documents and following review from the Defense Service Office, there are significant discrepancies and unjust practices.” The CO contends the administrative separation was “without due process” because there is no record nonjudicial punishment (NJP) was held or that the matter was forwarded by the command to a General Court Martial Convening Authority (GCMCA) “which is a required step in the process before proceeding with administrative separation.” He also contends it was error and unjust to add the Article 92 violation because you were not afforded an opportunity to respond to the additional specification. Additionally he contends all three specifications lacked evidence or held any merit, to include the argument the senior chief did not have the authority to give an order because it was a “private matter.” Lastly, the Board considered your CO’s comments that you are “without question one of the finest sailors [he has] known in [his] [REDACTED] years of service,” that your “character, work ethic, and commitment to the Navy are unmatched,” and your reinstatement would be an opportunity for the Navy to follow the Chief of Naval Operations guidance to “Get Real, Get Better.”

The Board reiterated its earlier determination that the NDRB’s decision is not controlling on this Board. Further, although the Board applauds your recent performance as lauded by your current CO, the Board noted your previous CO’s decision to administratively separate you came after approximately 12 counseling sessions regarding poor performance and violations of the Uniform Code of Military Justice, spanning from July 2017 through June 2018, and culminating with the additional misconduct specifically noted in your administrative separation notification. The Board reviewed your contentions of error in the charges and again concluded they are unsupported by the evidence, to include the newly submitted evidence.


The Board also considered the contentions raised by your current CO in his advocacy letter and determined his arguments that your administrative separation was without due process or authority lack merit and are unsupported by the evidence. With regards to the CO’s statement “there is no record that CO’s NJP was held nor was the matter forwarded by VFA 106 to their General Court Martial Convening Authority (GCMCA),” the Board was unsure the exact contention so it considered both possible interpretations. The Board, in considering the plain language of the contention, noted you refused NJP and there is no requirement for the CO to forward his decision to proceed with administrative separation processing to the GCMCA as part of “due process” or to receive “authority.” Separating the contention by the “nor,” the Board considered the CO’s statement “nor was the matter forwarded” as contending your matters were not forwarded to the GCMCA as elected in your administrative separation notification. The Board, however, noted your 29 November 2018 “Statement for Consideration by Separation Authority” was forwarded by [REDACTED] to the GCMCA, Commander, Naval Air Forces Atlantic along with the CO’s recommendation for administrative separation dated 10 January 2019. On 1 February 2019, the GCMCA authorized your discharge in response to the CO’s 10 January 2019 recommendation, which included your statement.

Based on the record, the Board concluded your matters were properly provided to and considered by the GCMCA prior to your administrative separation. Additionally, the Board noted your current CO did not provide additional and/or new evidence beyond his statement regarding the merit of the three specifications. After review and reconsideration of your contentions and the entirety of evidence provided by you, the Board concluded sufficient evidence existed to warrant your administrative separation, the resulting issuance of an adverse EVAL, and inclusion of the derogatory material in your OMPF. As a result, based on the available evidence, the Board again concluded there was insufficient evidence of an error or injustice to warrant granting your requested 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,

10/20/2022

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Executive Director

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