



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. 6939-22
Ref: Signature Date

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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 19 January 2023. 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 also considered the 31 October 2022 advisory opinion (AO) furnished by Navy Personnel Command, Office of Legal Counsel (BUPERS-00J) and your 26 December 2022 rebuttal response.

The Board carefully considered your request to remove the nonjudicial punishment (NJP) imposed on 28 February 2020 by Commander, Amphibious Squadron ONE, and to restore your grade to Petty Officer First Class. You contend your requested relief should be granted because an Administrative Discharge Board (ADB) unanimously concluded the preponderance of the evidence did not support the allegations for which you received NJP. Further, you contend you were erroneously found guilty of violating an order and making a false official statement because the evidence showed you did not commit those offenses. Specifically, you contend the preliminary inquiry officer (PIO), the Disciplinary Review Board (DRB), and your commander relied too heavily on the statistical unlikelihood of your high score rather than investigating the matter with neutrality and their "bias and over-reliance on the stats" was exposed at the ADB. Additionally, you contend the PIO lacked evidence to support his opinions which were "based on conjecture and best guesses, rather than firm conclusions reached based on the facts." The Board also considered your contention the DRB contributed to the unjust nature of the NJP by

“abandoning its fact-finding purpose” and coercing you into “falsely admitting wrongdoing.” You specifically contend the DRB members, which had already concluded you cheated and then lied about it during the preliminary inquiry, subjected you to a “coercive interrogation” with the “mission to elicit evidence of that assumed guilt” and, due to these “coercive conditions,” you agreed with the members that you “must have done something wrong.” Lastly, the Board considered your contention that it is unjust for the NJP to remain in your record, and for the punishment to continue to cause loss of pay and career opportunities, after a “neutral fact-finding body examined all the evidence and came to the opposite conclusion.” The Board also considered the numerous character letters submitted in support of your request for relief.

The Board, however, substantially concurred with the AO, and determined there is insufficient evidence to overcome the presumption of regularity attached to the Navy’s official actions. The Board noted the outcome of an ADB has no bearing on the commander’s decision to impose NJP. Administrative separation processing and NJP are separate and distinct processes serving different purposes and governed by separate and distinct authorities. The Board further concurred with the AO’s statement that, as an employment tool, the ADB is charged with forming findings and recommendations that provide a basis for separation for cause.

Additionally, the Board substantially concurred with the AO’s discussion of the evidence and determined the record contained sufficient evidence on which to base a guilty finding at NJP, and the fact the ADB came to a different conclusion does not in any way detract from the validity of the commander’s decision. Further, the fact that the General Court-Martial Convening Authority denied your NJP appeal on the grounds the evidence presented at NJP was sufficient to support a finding of guilty, stating the punishment was just and proportionate, lends further credibility to the commander’s decision. The Board noted Commander, Amphibious [REDACTED], during his consideration of your 23 February 2021 request to set aside the NJP, reviewed the additional evidence presented to the ADB and in your set aside request but determined it did not alter his determination.

With respect to your contentions regarding the PI and PIO, the Board substantially concurred with the AO, and determined none of the charges for which you were found guilty at NJP depended on the PIO’s opinion and concluded the commander’s decision was not dependent on nor unduly swayed by the PIO’s report but rather he came to his own conclusions when weighing the full breadth of available evidence. Further, the Board substantially concurred with the AO’s determination the DRB’s actions did not amount to material error nor were they indicative of a forced confession. Specifically, the Board noted you acknowledged your right to remain silent and the record does not reflect any reason for you to believe you were not at a DRB or that a change to your rights had occurred.

The Board also carefully considered the reiterated and emphasized contentions and concerns from your rebuttal response to the AO. Specifically, the Board considered your contention the AO is “inappropriate and should be disregarded” because it opines on whether your petition should be granted but noted the Board’s use of the AO is “advisory only.” Further, the Board considered your new arguments and again determined the evidence submitted is insufficient to overcome the presumption of regularity in the government’s actions.

The Board also considered your contention the commander unjustly, and with bias, exercised his NJP authority but determined there was insufficient evidence the commander unjustly, or with bias, exercised his authority when he initially imposed NJP or when he denied your request to set aside the NJP after the ADB came to a different conclusion.

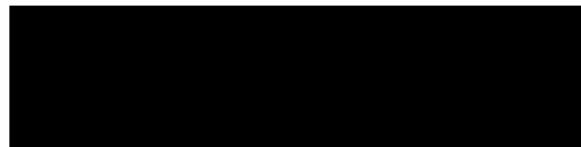
After fully considering the record and your submission, the Board determined there was insufficient evidence the commander made an unjust, unsupported, and/or biased determination based on the available evidence. The Board further considered your discussion of the DRB and, based on its careful consideration of the provided DRB transcript and the available evidence, determined there was insufficient evidence of a material error or injustice in the DRB's actions or to support your contentions the DRB's "persistent deception, threats, and intimidation" led to a coerced statement.

Additionally, the Board noted your discussion of the character letters presented at the ADB, the testimony from the senior chief regarding permissible study procedures, your "first-hand testimony" at the ADB, and the investigation of the Master Chief but noted the evidence in the available record is insufficient to support your contentions the commander's actions were disparate, unjust, biased, or improper. The Board concluded the commander was not only within his authority but that his exercise of that authority was not biased or in defiance of the facts. Therefore, the Board concluded there is insufficient evidence of an error or injustice warranting 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, _____

2/6/2023

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Deputy Director

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