



**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. 7102-22  
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 20 December 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 19 October 2022 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (PERS-00J) and your response to the AO.

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 overturn the Administrative Separation (ADSEP) Board's decision and to allow you to remain on active duty until you are eligible to retire. The Board considered your contention that the ADSEP process was used as a means to remedy an error made by the command. The command failed to route your Report of non-judicial punishment (NJP) in a timely manner, which resulted in your advancement to Chief Petty Officer (CPO). You also contend that the ADSEP Board members acted with bias to find cause to separate you, and the ADSEP Board was comprised of members from the command that had to report to your Commanding Officer (CO). You claim that there is another Sailor who was twice accused of sexual assault but was allowed to remain on ship. You also claim that you filed an Inspector General complaint because you were the victim of reprisal.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that you received NJP during 2015, while assigned to the █ for sexually harassing a junior sailor. During May 2021 a female Division Leading Chief alleged that you demonstrated sexual harassing behavior, your CO ordered you not to spend time along with any female in any space on board

the ship, you violated that order, and received NJP. The Board also noted that you were selected for promotion by the Fiscal Year 2022 CPO promotion board. Your advancement was approved because the fitness report withdrawing your advancement was not submitted to PERS-32 in a timely manner. The Board determined that your CO was authorized to process you for separation based on the fore mentioned misconduct and found no evidence that his/her decision was in retaliation to your promotion. The Board also determined that the ADSEP Board process afforded you the opportunity to present matters on your behalf and to make a case for retention. In addition, the Board found no evidence that the composition of the ADSEP Board was in error, nor is there evidence of bias and impropriety by the board members and you provided none. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

You also indicate in your application that you are the victim of reprisal. The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC § 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

1/6/2023

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Deputy Director

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