



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

██████████
Docket No. 7312-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 10 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 as well as the 31 October 2022 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (PERS-00J) and your response to the AO.

The Board carefully considered your request to remove your 22 April 2022 Report of Disposition and Offenses(s)/non-judicial punishment (NJP), Letter of Reprimand, Report of NJP, and all associated documents. You also request to be reinstated on the selected Limited Duty Officer (LDO) list if you are removed based upon the NJP. The Board considered your contention that new evidence from a previously unavailable eye witness refuted the allegations against you. The witness was not available to speak as part of the investigation or NJP, but now corroborates that you did not ever tell any Sailor to lie in an investigation. You also contend that the commanding officer (CO) did not have all the facts at NJP. A Petty Officer Third Class (PO3) had every reason to lie and attempt to get himself out of trouble. You claim that there is no evidence to support the conclusion that you failed to report the incident. You also claim that you were a member of Second Fleet, yet you were charged for violating a Sixth Fleet policy when there was no notice of this order, there was no liberty briefing, and the command failed in its obligation to make the Second Fleet sailors aware of the rules.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Articles 81 for Conspiracy and Article 107 for a False Official Statement. The Board noted that you acknowledged your Article 31, UCMJ Rights, acknowledged your right to appeal, and although you indicated an intent to appeal your CO's finding of guilt at NJP, and requested an extension, the Board found no record of your appeal.

Concerning the new witness [REDACTED] the Board noted that the new witness was asked to provide a statement to the investigating officer, however, according to the investigating officer, [REDACTED] declined to provide a voluntary statement. The Board determined that [REDACTED] refusal to provide a statement contradicts the veracity of his 13 September 2022 statement as well as his value as a witness. The Board also noted that there were numerous opportunities to have [REDACTED] provide a statement or to even appear as a witness on your behalf during the NJP. In fact [REDACTED] name is listed as a witness on the Report of Disposition of Offense(s). The Board also determined, that even if his statement were true, it only refutes one of three charges that you were found guilty of violating.

The Board found no evidence that the PO3's statement was submitted to get you in trouble and you provided none. The Board also noted that the Commander, Sixth Fleet policy, which noted that the policy applies to "all deployed and rotational forces under Operation Control or Tactical Control the C6F/CTF6." The Board found no evidence that you were not aware of the policy and you provided none. Moreover, the Board is not an investigative agency and relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board determined that based upon the totality of the evidence, your CO relied upon a command investigation and thus had sufficient evidence to determined that NJP was warranted. In addition, your CO acted within his discretionary authority, and conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.).

Regarding your request for reinstatement to the LDO selection list, the Board determined that because you were only selected for LDO and not yet appointed, there are no provisions in law or regulations for reinstatement, and you are required to reapply for the most current LDO selection board. Accordingly, the Board concluded that there is no 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 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,

2/2/2023

[REDACTED]

Deputy Director

[REDACTED]