



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. 7837-22
Ref: Signature Date



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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 March 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 11 January 2023, advisory opinion (AO) provided by the 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 change your date of rank for promotion to Lieutenant Junior Grade (LTJG/O-2) to "27 May 2019". You also request promotion to Lieutenant (LT/O-3) effective 1 June 2021, and entitlement to back pay and allowances. The Board considered your contention that you were notified your promotion to LTJG would be delayed up to 18 months, however, two days before the promotion delay notice became effective your commanding officer (CO) dismissed the pending non-judicial punishment (NJP) proceedings and issued a Non Punitive Letter of Caution (NPLOC) instead. You also contend that your command failed to notify you of the promotion delay until 15 November 2018,

although the promotion delay was sent on 29 October 2018. You argue that there was no pending investigation or derogatory information contained in your official record. You claim that according to 10 U.S.C. Section 624, there are two criteria that allows an officer's promotion to be delayed: (1) the existence of "adverse information" documented in the official military record or (2) if there is "Reportable Information" concerning the officer in question. In addition, "nonpunitive rehabilitative counseling[s] administered by a superior" are omitted. You also claim that you filed a complaint with the Navy Inspector General (NAVIG), however, NAVIG directed you to the Board. In response to the AO, you expressed how you felt explaining why you were the wrong rank and after years of attempting redemption, you threw in the towel.

The Board noted after dinner and drinking alcohol with fellow officers, there was an incident in your stateroom, and while assisting you back to your bed, your roommate discovered a partially unclothed female in your bed. Because the incident constituted a violation of regulations, your CO notified the Navy Personnel Command (NPC) (PERS-834) of your misconduct. Your misconduct was then properly noted in the PERS-834 system. The Board also noted that instead of imposing NJP as intended, your CO issued you a NPLOC noting an investigation that found your behavior prejudicial to good order and discipline, counseling you for exercising poor judgment in your personal conduct. Subsequently, as further described in the AO, your promotions to LTJG and LT were both delayed. Even though you were eventually recommended for promotion to LT, you resigned your commission prior to the promotion.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that pursuant to the Navy Military Personnel Manual (MILPERSMAN) 1611-010 your CO properly notified PERS-834 of the pending NJP and your misconduct. The Board determined that your CO was required to notify PERS-834 of your substantiated misconduct, and this requirement extends to cases where an officer has committed misconduct, but there is no NJP. Moreover, although the CO chose not to impose NJP, your misconduct, as substantiated by an investigation, still existed, therefore, your misconduct was properly reported and considered in the delay of your promotion to LTJG. The Board also noted that 10 U.S.C. Section 14311 provides that, "the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer has not met the requirement for exemplary conduct . . ." The Board further determined that the Chief of Navy Personnel (CNP) and Deputy CNP (DCNP) have been delegated the authority to delay the appointment of an officer selected for promotion. Therefore, the DCNP acted properly and within his/her discretionary authority when delaying your promotion to LTJG.

The Board noted the 29 October 2018 NPC notification regarding the delay of your promotion to LTJG, but did not find material error or injustice. The Board determined that you were properly notified of the promotion delay, you acknowledged the notification, and you were afforded the opportunity to submit a statement.

Concerning your promotion to LT, the Board considered that you resigned your commission prior to final adjudication. Therefore, based on the foregoing determinations and your resignation prior to final adjudication, the Board found no basis for promotion to LT. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice

warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

4/10/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]