



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

██████████
Docket No. 7990-22
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 18 April 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the Advisory Opinions (AO) provided by the Navy Personnel Command (PERS-32) and Office of Legal Counsel ██████████, and your responses to the AOs.

The Board determined that your personal appearance, with or without counsel, would 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 modify your Fitness Report and Counseling Records for the reporting period 1 December 2017 to 30 April 2018 and 1 May 2018 to 30 November 2018, by annotating that you were dual-hatted and includes all work performed, as well as correcting your PFA information. The Board also considered your request to remove the reporting senior's (RS) letter dated 22 October 2018 from your official military personnel file (OMPF). The Board considered your contentions that the Fitrep ending in 30 April 2018 was "revised adversely and signed in May 2018;" promotion language was changed from "CDR ██████████ has my highest recommendation for promotion to Captain" to ██████████ is recommended for promotion and a payed billet;" and there are grammatical errors made on your

Fitrep ending in 30 November 2018 Fitrep, to include additional work performed not annotated as well as PRT completion. Further, you assert the RS letter “contains lies and misrepresentations of the truth,” and you were wronged by the RS on several levels: mentally, emotionally, psychologically, and spiritually. You believe the RS, beyond setting one trap after another while serving under him, lied fourteen times to you and others from Feb to Dec 2018, he committed four ethics violations in his cover-up and gave another officer a license to do ill to you. You believe that he used this officer, one who you thought was your best friend in the unit, as the instrument to set you up, and he framed you for an offense that you did not commit to deflect his own wrongdoings. You further contend that private conversations were recorded using smartphone technology, in which the content was not favorable toward him and his ego was bruised. Hence, he took reprisal against you, all of which are an abuse of power and misuse of his command and authority.

The Board, however, substantially concurred with the AOs that the contested Fitreps were valid, not adverse, and complied with Navy Performance Evaluation System Manual guidance. The Board noted you reviewed, acknowledged, and signed the reports.

With regard to your Fitrep ending in 30 April 2018, the Board noted that it annotates your dual-hatted roles, and determined that your intent not to submit a statement constituted your acceptance of the Fitrep as written.

With regard to your Fitrep ending in 30 November 2018, the Board noted your written statement in response to the Fitrep and the RS’s corrective action. The Board felt this action taken by the RS was sufficient enough to satisfy your request to modify your Fitrep. The Board therefore, determined that your current record is a matter of fact and the contested Fitreps accurately represent your performance as written by the RS. Furthermore, the Board determined that based on the evidence provided, your RS did not act illegally or improper in issuing you the contested Fitreps nor did you provide sufficient evidence of reprisal and/or harassment. The Board concluded that it could not establish a clear relationship between the contested Fitreps, your contentions, and evidence submitted, and your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice, warranting removal of the Fitreps from your OMPF.

With regard to your request for removal of the RS letter in which he stated” you lack the intangible leadership skills and temperament for command,” the Board determined that the RS was in the best position to provide the assessment based on his observation and evaluation of your performance at the time of issuance. Moreover, the Board 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 thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice, warranting removal or modification of the Fitreps from your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Finally, the Board noted that you checked the “Reprisal/Whistleblower” box on your application. However, while the Board carefully considered your contentions, the Board found insufficient

evidence that a reprisal was committed against you. The Board thus 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, [REDACTED]. 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,

5/11/2023

[REDACTED]

Deputy Director

[REDACTED]