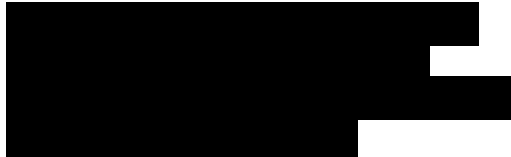




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 8022-22  
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 applications on 24 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 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 (AOs) provided by the Navy Personnel Command (PERS-32) and the Office of Legal Counsel (BUPERS-00J), as well as your 16 January 2023 response to the AOs.

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 remove your Evaluation Report & Counseling Record ("Eval") for the reporting period 15 November 2018 to 9 July 2019, and associated documents, as well as reinstatement to the grade of Chief Petty Officer (E-7). The Board considered your contention that the Command Master Chief (CMC) was biased and you were denied due process rights at Captain's Mast, which resulted in an unfair hearing.

The Board noted that the Commanding Officer (CO) directed a preliminary inquiry into allegations of misconduct surrounding events that took place on or about 7 June 2019. The inquiry was complete on 1 July 2019 and found that misconduct occurred and recommended that you be charged with violation of Articles 128 and 134 of the Uniform Code of Military Justice. The Board noted, too, that your CO imposed nonjudicial Punishment (NJP) on 9 July 2019.

In regards to your contention that you were denied due process, the Board noted that on 15 July 2019, you filed an appeal of NJP, but it was denied. On 25 May 2021, you exercised your right to file a complaint of wrongs, which was also denied. The Board noted that the appeals were reviewed and denied, finding no wrongs committed by the CO. The Board also determined the Eval is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. Moreover, your CO submitted a NAVPERS 1070/813 to remove his recommendation of your advancement as authorized under BUPERSINT 1430.16G.

In regards to your claim that the Command Master Chief (CMC) was biased, used his position to deny you legal counsel prior to mast, and spoke with potential witnesses, the Board determined that you provided insufficient evidence to support this claim.

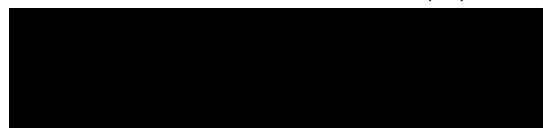
You also indicate in your application that you may be suffering from post-traumatic stress disorder (PTSD). The Board, however, determined that there was insufficient evidence to conclude you were diagnosed with PTSD, or that PTSD would mitigate your misconduct.

Based on the totality of the evidence, the Board concluded that your CO acted within his discretionary authority by determining that the NJP was warranted. In making this finding, the Board considered that you exercised your extensive due process rights to challenge his findings and actions through a NJP appeal and Article 1150 Complaint of Wrongs. The Board noted that your CO lost confidence in your ability to lead, and withdrew his advancement recommendation. In the absence of sufficient evidence to the contrary, the Board will presume that government officials have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

2/24/2023



Executive Director

Signed by: 