



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: 8043-22

Ref: Signature Date

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Dear █

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 8 November 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.

This Board previously denied your request for a Lieutenant Commander Special Selection Board on 13 October 2020.

The Board carefully considered your request for promotion to Lieutenant Commander (LCDR/O-4), in addition to back pay and allowances. You also request that your records be amended to reflect the grade LCDR, and that your official record be updated with missing documents noted in your application. The Board considered your contention that the term "Passover" was incorrectly used during two promotion selection boards (PSBs) for not exercising due diligence and not adhering to instructions according to SECNAVINST 1401.3B, that resulted in an unjust retirement and a determination that you are unfit for naval service. You claim that the common practice was not to use the term "Passover", but to remove the name, making it available for future boards. As evidence, you provided a personal statement and documents for inclusion in your record.

The Board, however, substantially concurred the previous Board's determination that your petition lacked evidence that the PSBs violated any regulations or failed to properly consider

your record. In this regard, the Board noted that according to MILPERSMAN 1420-050, the statutory procedures for promotion selection constitutes a competitive system that requires the selection of the best qualified from a group of generally outstanding officers. This results in a certain number of individuals failing selection one or more times. Consequently, pursuant to 10 U.S.C. § 632, a “lieutenant or lieutenant commander, who has failed selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall” be discharged or retired if eligible. The Board determined that the Chief of Naval Personnel acted properly by processing you for discharge after failing to be selected for promotion at least twice. In addition, the Board found no evidence to support your contentions regarding the use of the term “Passover” or that any purported use of the term resulted in your failures of selection and you provided none. Moreover, the Board does not have the authority to grant your request for promotion to LCDR. According to the 10 February 2015, Under Secretary of Defense memorandum regarding the limitation on the authority of Military Department Correction Boards, the Board does not have the authority to correct your record by showing that you have been appointed to LCDR when you were not appointed to LCDR by the President or the Secretary of Defense.

Regarding your request to update your official record with missing documents, the Board determined that you have not exhausted your administrative remedies. You must contact Navy Personnel Command (PERS-3) to coordinate the submission of documented purported to be missing from your record. Based upon the foregoing, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting your promotion to O-4 with back pay and allowances. 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,

12/13/2022

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Executive Director

Signed by: █