



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

██████████
Docket No. 8094-22
Ref: Signature Date

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Dear Petitioner:

This letter 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 22 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.

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 reinstate your selection for promotion to E-7 by the Fiscal Year (FY) 2022 Chief Petty Officer (CPO) Selection Board, Cycle 250. The Board considered your argument that you were cleared of all charges and inquiries, as well as your contention that the withholding of your promotion is reprisal.

The Board noted you were selected for advancement to CPO by the FY 2019 Active Duty CPO Selection Board and a post-board review of your record discovered you had a pending incident report in the Joint Clearance Access and Verification System (JCAVS). On 9 April 2018, you were notified that you were suspected of violating Article 134 of the Uniform Code of Military Justice. The Naval Criminal Investigative Service (NCIS) conducted an investigation into the allegations that you were involved in an inappropriate relationship with a female high school basketball player on a team in which you were a volunteer assistant coach. The Board noted the

FY 2019 Board was not aware of the allegations against you when it selected you for advancement to E-7. On 8 October 2019, Commander, Navy Personnel Command (PERS-833) notified you that Chief of Navy Personnel permanently removed your name from the FY 2019 Active Duty CPO Selection Board List.

You were again selected for advancement to CPO by the FY 2022 Active Duty CPO Selection Board. However, the post-board adverse screening revealed the discovery of adverse or reportable information in your record and your name was withheld from advancement. On 29 November 2021, Commander, Navy Personnel Command (PERS-833) notified you that Chief of Navy Personnel permanently removed your name from the FY 2022 Active Duty CPO Selection Board List.

With regard to your assertion that you were cleared of all charges stemming from the 2018 allegations, the Board noted that, although Commander, U.S. Naval Forces, Europe/Africa closed the case regarding the 2018 investigation while you were assigned to Task Force SIX FOUR, on 4 October 2021, you were notified that the Chief of Naval Personnel directed your advancement be reviewed due to the discovery of adverse or reportable information. The Board noted that you were provided the opportunity to submit, in writing, any additional matters you believed Chief of Naval Personnel should be aware of prior to making a determination in your case. Your 20 October 2021 statement, as well as your chain of command's endorsements, and Deputy Chief of Naval Personnel's recommendation were considered by the Chief of Naval Personnel. On 23 November 2021, the Chief of Naval Personnel permanently removed your name from the FY 2022 Active Duty Navy CPO Selection Board List.

The Board noted that in accordance with BUPERS Instruction 1430.16G, the Chief of Naval Personnel is the sole authority for the advancement of personnel to paygrades E-7 through E-9 as well as the sole authority for the removal of enlisted personnel selected for advancement to E-7 through E-9 from a selection board list. 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 found your evidence insufficient to overcome this presumption and substantially concurred with the Chief of Naval Personnel's decision to remove your name from the FY 2022 Active Duty Navy Chief Petty Officer Selection Board List. Specifically due to your admitted misgivings and poor judgement. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting any corrective action.

The Board also 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]
[REDACTED] Your written request must contain your full name, grade/rate, 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.

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,

12/22/2022

[REDACTED]

Deputy Director

[REDACTED]