



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. 8257-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 12 December 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, as well as the 26 August 2022 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32) 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 remove your fitness report and Performance Summary Reports (PSR) for the reporting period 7 July 2018 to 31 October 2018. You also request to replace your fitness report ending 31 October 2018 with a fitness report covering the period 7 July 2018 to 1 August 2019, and letter extension ending 3 September 2019; or a non-observed report for the period 2 August 2019 to 3 September 2019. Alternatively, you request that the Board use a billet subcategory, reassess the trait scores, and assign an Immediate Superior in Command (ISIC) as reporting senior (RS), or an alternate RS. The Board considered your contentions that the ranking board was not conducted according to the Defense Health Agency Administrative Instruction 100 or SECNAVINST 1402.1. At the time of the ranking boards, you were not yet a Commander (CDR/O-5) and you are not sure if you were considered

by the O-4 or O-5 ranking board. You argue you were significantly and unjustly disadvantaged. You claim that according to regulations, an officer recommended for selection or non-selection by a selection board will be treated as if the original board either selected or non-selected that officer.

The Board, however, substantially concurred with the AO that your fitness reports are valid. In this regard, the Board noted that you acknowledged your fitness reports covering the reporting periods 7 July 2018 through 3 September 2019 and you indicated that you did not intend to submit a statement. The Board also noted that the fitness report processed during the contested reporting period were required according to the Navy Performance Evaluation System Manual (EVALMAN). The Board determined that since your promotion to CDR by the Special Selection Board was not yet approved, your rank/grade during the reporting period ending 31 October 2018 correctly indicated lieutenant commander. The Board also determined that your fitness report ending 3 September 2019 correctly indicated your grade/rate as CDR. The Board noted, too, that the Navy Inspector General dismissed your Article 138 Complaint of Wrongs because the allegations were not credible and did not warrant further investigation. In consideration of the totality of the evidence, the Board found no evidence that the RS abused her discretionary authority, that the ranking boards were not conducted according to regulations, or that your RS was impaired. In addition, the Board found no evidence that would warrant the assignment of an ISIC, alternate RS or modification to the reporting chain. The Board further determined that there are no regulatory or statutory provisions that require fitness reports to be replaced or modified due to retroactive promotion. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

12/14/2022

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Deputy Director

Signed by: █