



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. 8416-22
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 7 February 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 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 16 November 2022 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32), and 8 December 2022 AO furnished by the Navy Office of Legal Counsel (BUPERS 00J). The AOs were provided to you on 21 December 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your fitness report for the reporting period 16 September 2020 to 26 March 2021 and the 30 March 2021 Administrative Remarks (page 13) entry. You also request to reinstate your advancement to E-7. The Board considered your contentions that you were interviewed by the Naval Criminal Investigation Service (NCIS) approximately two weeks after the alleged incident, your memory about the number of drinks consumed was speculation, you were coerced by NCIS, and under the Uniform Code of Military Justice (UCMJ) an uncorroborated confession is inadmissible. You also contend that there is no evidence to corroborate the underlying drunk driving claim, there was no blood or breathe test conducted because NCIS negligently failed to timely investigate. You assert that the evidence directly undercuts the allegation of driving under the influence, and the same fundamental concerns about protecting justice should apply as during court-martial. You also assert that the

page 13 entry failed to refer to the lengthy “6-hour” drinking period, the entry referred to “at least 8 alcoholic drinks”, did not refer to ten alcoholic drinks, and the fitness report’s reference to ‘6-hours” was egregiously ignored in the page 13 entry. You admitted to driving home with a junior female sailor around 0430, however, you claim that you did not drive in violation of Article 113, UCMJ.

The Board, however, substantially concurred with the AOs that your record should remain unchanged. In this regard, the Board noted that the Navy Performance Evaluation System Manual (EVALMAN) authorizes reporting seniors (RSs) to comment on misconduct when the facts are clearly established to the RS’s satisfaction. The RS comments indicated that you admitted to consuming at least eight to ten alcoholic drinks in a six hour period, then drove yourself and a junior sailor home. The Board determined that the RS acted within her discretionary authority and according to the EVALMAN when issuing your ‘Significant Problems’ fitness report and changing the promotion recommendation due to a loss of trust of confidence in your ability to lead as a Chief Petty Officer (CPO). The also Board determined that a RS’s loss of trust and confidence is discretionary and your RS was not required to impose non-judicial punishment or any other form of punitive action to change or withdraw your promotion recommendation. Concerning your request to remove your page 13 entry, the Board noted that there is no evidence of the page 13 entry in your official record, therefore, there is no action for the Board to take. 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.

Based on the fore going, the Board determined that there is no entitlement to promotion prior to the Fiscal Year (FY) 2023 Navy Active Duty E-7 promotion selection board. The Board also noted that the Chief of Naval Personnel has not yet adjudicated whether your name should be removed from the FY 2023 CPO list of selectees or if you should be advanced. Accordingly, your request is not ripe for Board consideration. 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,

2/15/2023

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Deputy Director

Signed by: █