



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

██████████
Docket No. 8456-22
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 14 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.

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 the violation for Article 92, Uniform Code of Military Justice (UCMJ) from your 9 June 2021 Report and Disposition of Offenses/non-judicial punishment (NJP). You also requested reinstatement of your rank to E-6. The Board considered your contentions that you were falsely accused of drunkenness aboard the ██████████ and the charges were concurrent and without facts. You also contend you were not drunk and you were not issued a urinalysis or breathalyzer to validate the accusations. You claim the evidence added to your file was confiscated from a sailor involved in the NJP case. You also claim due to reprisal and acts of intimidation, you were punished in an unjust manner, your reduction in rank has caused a strain on your career, and you will reach your high year tenure during October 2023 if you are unable to advance to E-6.

The Board noted you received NJP for violating Articles 92 and 112 UCMJ for wrongfully consuming alcohol onboard the ██████████ and for overindulging in an intoxicating liquor that resulted in you being incapacitated and unable to properly perform of your duties. The Board also noted your Commanding Officer (CO) found you guilty at NJP, and you were awarded reduction in rate to E-5 and 60 days restriction. In addition, you were advised of your Article 31 Rights, UCMJ,

you acknowledged your right to appeal your CO's finding of guilt, but did not submit an appeal. The Board found no evidence that the basis for your violation of Article 92, UCMJ was invalid and not supported by a preponderance of evidence and you provided none. The Board determined your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.). The Board also determined your CO acted within his discretionary authority when he imposed NJP and reduced you to E-5.

Concerning your claim of reprisal, the Board noted the 17 December 2021 correspondence from the Navy Inspector General (NAVIG) and their determination that there was no inference of causation between the protected communication and the personnel actions. The NAVIG also noted the Department of Defense Inspector General reviewed your complaint and concurred with the recommendation to dismiss your case without further action.

The Board thus, 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, Office of Legal Policy, [REDACTED]. Your written request must contain your full name, grade/rank, 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. Accordingly, the Board concluded that there is no probable material error or injustice warranting modification to your NJP or restoration of rank.

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,

3/7/2023

[REDACTED]

Deputy Director

[REDACTED]