



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

██████████
Docket No. 8626-22
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 applications 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 7 December 2022 advisory opinion provided by Navy Personnel Command (PERS-32) and your response to the advisory opinion.

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 for the reporting period 24 July 2021 to 31 October 2021 and that it be replaced with a "No Fault Memorandum." If approved, you request a special selection board for promotion and retention. The Board considered your statement and contentions that the fitness report violated the Navy Performance Evaluation System Manual (EVALMAN), specifically, adverse fitness reports may not be directed as punishment, the reporting senior (RS) cannot comment on "Judicial proceedings not concluded", since the judicial proceedings were not completed the fitness report is punishment, and the RS is not permitted to quote directly from investigative reports. You also contend according to the EVALMAN, fitness report comments are not a substitute for appropriate corrective action, and RSs are to take reasonable care to avoid comments that may later be invalidated by official findings. You further contend the fitness report lacks dates of misconduct. The fact that the misconduct falls outside of the dates of the contested fitness report and the RS's time in command should be documented. In response to the

advisory opinion, you contend your Board of Inquiry (BOI) reflected findings of no misconduct and no basis for substantiating any of the allegations against you.

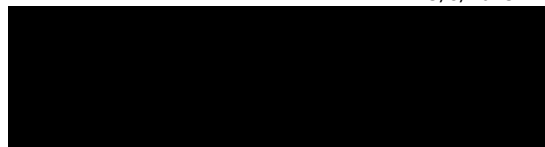
The Board, substantially concurred with the advisory opinion that your fitness report is valid. In this regard, the Board noted according to the 5 November 2021 Report of Misconduct, you violated the Navy Sexual Harassment Prevention and Response Program Manual creating a hostile work environment; you were derelict in your duties by failing to properly care for you patients; and you displayed conduct that is unbecoming an offer and a gentleman. The Commander, Naval Special Warfare Center also noted your poor leadership and misconduct spanned your time with the command, and the 23 August 2021 command investigation substantiated allegations of sexual harassment, abusive leadership, favoritism, and subpar conduct for an officer and leader. The Board determined the RS properly commented on an investigation that substantiated misconduct. The RS was not required to include the specific dates of your misconduct and the fitness report was processed after completion of the command investigation. The Board also determined the EVALMAN permits specific comments when they are a significant part of the member's duties or the member displays particularly strong or weak performance. In this case, a command investigation substantiated your misconduct, the facts were clearly established to the RS satisfaction, and the RS was within his authority to submit the adverse fitness report and to comment on your substantiated misconduct. The Board, noted, too that based upon the 1 September 2021, Report and Disposition of Offense(s), it was your Commanding Officer's (CO) intent to impose non-judicial punishment, therefore, your argument that your fitness report was used a punishment and in lieu of corrective action lacks merit.

The Board noted your BOI unanimously found that a preponderance of the evidence did not substantiate a basis for your separation. The Board determined according to 10 U.S.C. section 1182, the BOI was convened to receive evidence and make findings and recommendations as to your separation for cause. The BOI is an administrative process that is not intended as, nor does it function as a method to overturn or invalidate other administrative actions. The Board also determined your BOI's findings were not binding on your RS, who had independent authority to determine whether you committed the misconduct. Based on the foregoing, the Board found no basis for the removal of your fitness report or a special selection board for promotion and/or retention. 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,

3/8/2023



Deputy Director

Signed by: 