



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

██████████
Docket No. 8924-22
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 7 March 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 15 December 2022 Advisory Opinion (AO) provided by the Navy Personnel Command (PERS-32), and your response to the AO.

Regarding your request for a personal appearance, 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 modify your fitness report for the reporting period 26 June 2021 to 31 January 2022 by removing the block 41 statements, "Member received lower marks in Blocks 34 and 35 due to failure to uphold core values which negatively impacted command climate" and "that has been inconsistent in his performance." You also request to increase your block 34 and 35 performance traits and to change your promotion recommendation from "progressing" to "must promote." The Board considered that the fitness report was issued because the investigating officer substantiated an equal opportunity complaint against you by a senior officer, stating that you harassed her based on her race and sex via a social media post; the fitness report was issued immediately after you were taken to the Executive Officer's office and ordered to submit a resignation letter for your collateral positions. You contend that *U.S. v. Murray* sets the precedence to why your case was improperly substantiated, and the act of

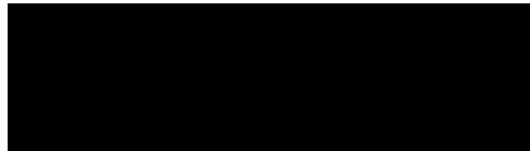
posting on social media alone does not fall within the acts prescribed by the Navy Harassment Prevention and Military Equal Opportunity Program Manual. When applied to your case, you believe that posting on your personal social media account and not mentioning the complainant is not enough to establish hostility in the work environment. You claim that you apologized to everyone for your social media post.

The Board, however, substantially concurred with the AO that your fitness report is valid as written and filed according to the Navy Performance Evaluation System Manual (EVALMAN). The Board noted that a command investigation substantiated misconduct and found that your conduct ran afoul of the Navy's core values. The Board also noted that the Navy Harassment Prevention and Military Equal Opportunity Program Manual defines harassment as *any* behavior that is unwelcome or offensive to a reasonable person, whether oral, written or physical that creates an intimidating, hostile or offensive environment. Therefore, the Board determined that your social media post violated regulations. In addition, according to the EVALMAN, the reporting senior (RS) is permitted to comment on misconduct that is established to his/her satisfaction and your RS has a duty to report significant and persistent weaknesses. The Board also determined that the RS has the responsibility of assigning performance trait grades and promotion recommendations. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy or injustice warranting modification. In consideration of the available evidence, the Board further determined that the corrections to your fitness report are not warranted.

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, _____

3/29/2023

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Deputy Director

Signed by: _____