



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

█  
Docket No. 8991-22  
Ref: Signature Date



Dear Petitioner:

This 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 21 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 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 Advisory Opinions (AO) provided by Navy Personnel Command (PERS-32) and the Office of Legal Counsel (PERS-00J). The AOs were provided to you on 9 February 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove your Evaluation Report & Counseling Records ("Eval") for the reporting period 16 November 2020 to 21 October 2021 and to reinstate your advancement to Chief Petty Officer (E-7). The Board considered your contentions that the Eval was unjustified and wrongly given as well as your claim that the Eval was given in lieu of Nonjudicial Punishment (NJP) for an investigation that was conducted and deemed unsubstantiated. Finally, the Board also considered your assertion that there are no adverse entries in your OMPF and the Eval in question was given to take away your promotion selection by the Fiscal Year 2022 (FY22) Advancement Board.

The Board noted that on 5 October 2021, NAVAMIN 21/21 announced your selection to Chief Petty Officer by the FY22 Active Duty Navy E7 Advancement Selection Board Results. However, on 4 October 2021, you received a Special/Regular Eval to withdraw your advancement recommendation.

The Board substantially concurred with the AOs that the Eval is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. In this regard, the AO noted that per BUPERSINST 1610.10E allows the reporting senior to submit a Special Report if needed to withdraw an advancement recommendation. Further, the AO noted that the CO does not have to conduct an investigation, issue NJP, or censure to document misconduct in an evaluation report. In this case, the CO issued the adverse evaluation report and withdrew your advancement recommendation since your, “on and off duty behavior was inconsistent with Navy Core Values. Removal from position as Leading Petty Officer due to inappropriate behavior in front of junior sailors.” You acknowledged (signed) the Eval and chose not to submit a written statement. Furthermore, the AO noted that because you elected not to submit a statement when signing the report, it is perceived to be an agreement with the performance assessment. Finally, the Board noted that you provided no evidence that the Eval violates the policy nor proof that the reporting senior acted for an illegal or improper purpose.

In regards to your contention that a Command Managed Equal Opportunity (CMEO) investigation was conducted and deemed unsubstantiated, the Board that the Eval does not reference any CMEO Complaint or investigation. Further, in regards to your assertion that there are no adverse (Field Code 38) entries in your OMPF, the Board noted that this argument, even if true, does not invalidate the Eval in question or support your advancement to E-7. Thus, the Board concluded that your petition did not demonstrate probable material error, substantive inaccuracy, or injustice warranting the relief.

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,

4/10/2023

