



for both elements of punishment imposed on [Petitioner]" and considered the implied contention that remission of your punishment warrants your requested relief.

The Board, however, substantially concurred with the PERS-32 and PERS-00J AOs. Specifically, the Board noted your punishment was remitted but your nonjudicial punishment (NJP) was not set aside. The result of the CO's request to remit your punishment is only cancellation of the unexecuted punishment, not removal of the NJP. Remission is appropriate under the same circumstances as mitigation. However, a set aside is used "when the authority considering the case believes that under all circumstances of the case, the punishment has resulted in clear injustice." The Board substantially concurred with the PERS-00J AO's finding that your CO was "rewarding good behavior rather than making a determination the NJP should not have been imposed." Further, the Board, having determined the NJP had not been set aside or otherwise removed, and noting the adverse EVAL is required by instruction, concluded the adverse EVAL should remain in your OMPF.

The Board also substantially concurred with the PERS-00J AO's recommendation regarding the exam invalidation. Specifically, the Board noted the suspended reduction in rate was executed in error causing the invalidation of the exam and making you ineligible for advancement because your record indicated you were no longer an E-6. However, the Board concurred with the AO and determined this error was immaterial because you would still have been ineligible for advancement since the adverse EVAL, written as a result of your NJP, removed your advancement recommendation by marking "significant problems" in block 45. The Board further noted BUPERSINST 1430.16 outlines a mechanism to request an exception to policy which would allow you to reinstate your exam validation but there is no indication you have exhausted your administrative remedies. Therefore, the Board concluded there is insufficient evidence of material error or injustice in your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

4/14/2023

[Redacted signature area]

Executive Director

Signed by: [Redacted name]