



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

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Docket No. 1-23
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 application on 27 April 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 31 January 2023 advisory opinion (AO) provided by the Navy Office of Legal Counsel (PERS-00J). The AO was provided to you on 13 March 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 convert your rating from Engineman (EN) to Special Warfare Operator (SO), reinstate all SO benefits, and an opportunity for continued service to retirement. The Board considered your statement and contention that being judged by the Trident Review Board (NEC/SO Rating Review Board) before your civilian criminal case concluded was unfair and unjust. You explained that after 15 years of being sober, you resorted to drinking alcohol, which resulted in legal problems, Captain's Mast, and reduction in rate from E-6 to E-5. As evidence, you furnished a personal statement and civil court documents.

The Board noted that you received non-judicial punishment (NJP) on 12 November 2019, you pled guilty to violating Uniform Code of Military Justice (UCMJ) Article 92 (six specification) and Article 134, your commanding officer (CO) found you guilty, and awarded a Punitive Letter of Reprimand along with a reduction in rate to E-5. The Board also noted that your evaluation report for the reporting period 16 November 2018 to 12 November 2019 documented your NJP and your reporting senior noted that you were relieved of your duties as Leading Petty Officer. The Board noted, too, that you were arrested for brandishing a weapon and public intoxication on 4 July 2020. According to the Commonwealth of █ civil court documents, on 6 October 2020, you were represented by counsel, and the charges for brandishing a weapon and public intoxication were dismissed without prejudice.

The Board, however, substantially concurred with the AO that the NEC/SO Rating Review Board and CO's decision to revert your rating was valid. In this regard, based on your aforementioned misconduct, the CO lost confidence in your ability to perform the duties associated with or required by the SO rating. According to MILPERSMAN 1220-300, █ are elite and held to a higher standard, thus, it is especially important that Service members assigned to duty involving the performance and supervision of SO operations exemplify unquestioned personal conduct, reliability, judgment, and observance of military regulations. The Board determined that the CO acted properly and within his discretionary authority when determining that you were no longer suitable for assignment in the SO rating. The Board also determined that your CO was not required to delay the NEC/SO Rating Review Board pending the civil court proceedings nor was he bound by the civil court's decision. The Board further determined that due to the Navy high year tenure (HYT) policy for an E-5 and your reduction in rate, there is no basis for a HYT waiver or extension on active duty until eligible for retirement. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting reinstatement of your SO rating with associated benefits or to allow you to continue to retirement in the Navy. 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,

5/18/2023

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Deputy Director
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