



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

█  
Docket No. 327-23  
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 13 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.

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 considered your contention that its previous denial of a personal appearance “provided no rationale or substantiation and appears to be an opinion” and also considered your assertion your live testimony is required to provide “critical context” to the entire situation as well as oral testimony of documentation from your sealed case. Even considering these facts, the Board determined your personal appearance would not materially add to their understanding of the issues involved. For purposes of ensuring complete review, the Board considered your counsel’s proffer of testimony in the undated memorandum submitted in your July 2022 e-mail correspondence.

The Board carefully considered your request to remove the fitness report and counseling record (fitness report) for the reporting period 1 February 2019 to 23 July 2019 and to direct the convening of a special selection board.

The Board meticulously considered all of the evidence of record, to include the previous submitted application packages for case 1294-20 and case 7821-21, the e-mail submission received 18 July 2022 which was not previously considered, and the current submission.

Before addressing the contentions regarding the purported errors and injustice of the adverse fitness report, the Board felt it important to respond to your numerous critical comments.

In general, the Board verifies the contents of a submitted application by ensuring the documents listed on the DD Form 149 as supporting documentation and/or listed as enclosures on a Petitioner's statement and/or counsel's brief are present within the case file. When "allied papers" is listed as the supporting documentation and there is no statement or brief contained in the submitted package, the Board is unable to verify that the listed supporting documentation is in the package and must presume the application to be complete. In the 7821-21 case, the Board had no means of determining what had been submitted other than what was physically in the case file, and as the burden is on you, or in this case the attorney hired to represent you, the Board presumed completeness. Without a listing of the supporting documentation, the Board had no means of ensuring all the "allied papers" were present in the case file. Because 7821-21 was a reconsideration request of case 1294-20, the Board considered both case files when making its previous determination. The fact there was not a statement or brief for consideration did not "unjustly prejudice" you nor did it negate "the validity of the Board's decision letter."

The Board acknowledges the e-mail submission received 18 July 2022 should not have been simply added to the closed 7821-21 case file, but concluded you were not prejudiced by this because the submitted information was fully reviewed and considered as part of your current case, 327-23.

Also, you comment that it is "gross error/negligence in communication" for neither yourself nor your attorney to have received a copy of the 7821-21 decision letter. The Board notes Board procedures require letters to be sent to petitioners via their counsel. It is unfortunate the decision letter was not received by counsel, but did not constitute "gross error/negligence."

The Board considered each of the articulated "five egregious and significant errors" of the Board and the Reporting Senior (RS) and concluded there is insufficient evidence of an error or injustice in the issued adverse fitness report ending 23 July 2019. A review of enclosure (3) of your current application, which you submitted as evidence that you "did submit a statement several times" did not reflect this assertion. However, the Board concluded you were not prejudiced by the noted lack of a statement in case 7821-21 by the previous Board.

Additionally, you take issue with the Board's comment in the 7821-21 decision document that the majority of the documents had been previously considered but the Board noted that in the same letter, the Board advised you that your entire record was considered by the Board. Therefore, the Board concluded there is no error or injustice in the Board's review of the entire record during the past and/or present review.

In its complete and thorough review of the evidence of record, the Board again found no error or injustice in the RS's issuance of the contested adverse fitness report. The Board considered your

contentions the RS showed personal animus, was politically compromised by a foreign government, and unjustly exaggerated the situation. Further, the Board considered your contention the adverse fitness report is part of the same action/reaction from the RS as the DFC request because they were submitted during the same timeframe and refer to the same “specific incident.” Additionally, you contend the Board’s “claim” that the two actions were “independent” because the adverse fitness report did not “explicitly include language about the detachment for cause request” was “disingenuous.” The Board again substantially concurred with the AO previously provided by Navy Personnel Command (PERS 32) in your initial case and specifically relied on BUPERSINST 1610.10D which allows an RS to document details of misconduct that have been clearly established to his satisfaction. As the previous Boards have noted, the RS’s markings and block 41 comments were supported by the preliminary inquiry. Although the Board noted the rebuttal statement to the adverse fitness report dated 18 July 2019 was rejected by Navy Personnel Command (PERS 32) because it was intemperate in tone, not confined to pertinent facts, made accusations, and impugned the motives of the RS or others, the Board considered the assertions and explanations contained within the rebuttal statement. However, the Board, having fully reviewed the preliminary inquiry, to include the enclosures, and your e-mail explanation of 6 June 2019, determined the RS did not err, unjustly rely upon, or improperly ground her decision to issue an adverse fitness report based on the 6 June 2019 incident. Further, the Board determined the assertions and explanations you espouse in your rebuttal to the fitness report are insufficient to overcome the presumption of regularity that attaches to the RS’s reliance on the preliminary inquiry.

Further, the Board considered the new evidence provided and concluded the letter from ██████████. did not overcome the presumption of regularity that the RS acted within her authority when she issued the adverse fitness report. Additionally, the Board considered your recent designation as an independent duty PAO and the awarding of credit for an independent duty PAO tour, but concluded these applauded accomplishments do not change the facts of the June 6<sup>th</sup> 2019 incident which was the underlying reason for adversity in the contested fitness report.

The Board also carefully considered your contention the “one adverse fitness report is aberrant to your entire record,” which shows consistent performance leading up to and after it was written. Through discussion of the marks received in your “most recent fitness report at the Navy Office of Community Outreach” and the two fitness reports received at Naval Forces Central Command that preceded your tour in ██████████, you contend those marks are “indicative of [your] career performance and consistency and sew significant doubt into the real rationale” behind the RS’s marks in the contested fitness report. You further contend this is “more solid evidence” that your record should be corrected “due to this further demonstration of ‘the existence of probable material error or injustice’.” The Board however concluded the fitness reports before and after the contested fitness report provide insufficient evidence of an error or injustice in the contested fitness report which notes a “single incident” is the underlying reason for the adverse fitness report.

Even considering all of your supporting documentation, to include the letter from the Ambassador that has been considered by each of the previous Boards and this Board, and considering the proffered testimony outlined by counsel, the Board determined you have not met

your burden to overcome the presumption of regularity attached to the official actions of the Navy. The Board concluded the RS acted within her authorization, within the requirements of BUPERSINST 1610.10D, and without bias, prejudice, or an illegal or improper purpose. Therefore, the Board concluded your requested relief is unwarranted.

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,

5/11/2023

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

Signed by: 