



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. 494-23
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 28 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 24 January 2023, advisory opinion (AO) provided by the Navy Personnel Command (NPC) (PERS-32) and your response to the AO.

The Board carefully considered your request to remove the fitness report for the reporting period 1 June 2019 to 29 February 2020, and the 21 April 2022 NPC correspondence notifying you that your name was removed from the Fiscal Year (FY) 2021 Navy Active Duty Lieutenant All Fully Qualified Officer List (AFQOL). You also request entitlement to any financial or promotion remedies. The Board considered your statement that you were found guilty at non-judicial punishment (NJP) for violating Articles 133 and 134, Uniform Code of Military Justice (UCMJ) and awarded an oral reprimand as punishment. You explained that according to the Manual for the Judge Advocate General (JAGMAN) punitive reprimands for officers must be in writing, therefore, you were not awarded an authorized punishment. However, you received an adverse fitness report for violating Articles 133 and 134. You contend that according to the Navy Performance Evaluation System Manual (EVALMAN) the reporting senior (RS) should not use fitness report comments as a substitute for appropriate corrective actions or UCMJ proceedings, and the RS should not refer to NJP proceedings unless there has been a finding of guilty or awarded punishment. You claim that although the fitness report does not explicitly reference NJP, the RS still alluded to violations for the NJP that were dismissed. You also claim that you

were notified that your name was removed from the FY 2021 AFQOL and the fitness report was specifically referenced as the basis for promotion removal recommendation. In response to the AO, you argue that the AO did not mention that EVALMAN advises RSs not to refer to civil, courts-martial, or NJP proceedings unless there has been a finding of guilty or award of punishment. You also argue that the RS used the fitness report as an alternative to the proper disposition of misconduct, because he could not impose NJP.

The Board noted that you were issued a Periodic/Regular fitness report with the performance traits for 'Command or Organization Climate' and 'Leadership' marked 2.0, the performance trait for 'Military Bearing/Character' marked 1.0, and in block 41 the RS commented that you "fraternized with a male second-class petty-officer, in violation of UCMJ Articles 133 and 134, as substantiated by a command and NCIS investigation." The Board also noted that promotion recommendation was marked 'Significant Problems'.

The Board also noted the 9 January 2020 correspondence from the commanding officer (CO), also the RS, acknowledging the NJP proceedings for violating Articles 133 and 134. The CO indicated that because you acknowledged your misconduct and provided a statement placing your conduct in context, he elected to administer an oral reprimand. Subsequent to the proceedings he learned that an oral reprimand is not an authorize punishment. Since the proceeding cannot be repeated, the CO submitted a 10 March 2020 Matter of Interest Filing (MIF) to preserve the context of your misconduct for future reviewing, examining, or board consideration.

The Board substantially concurred with the AO. In this regard, the Board noted that a RS is authorized to comment on misconduct that has been established through reliable evidence to the RS's satisfaction. The Board also noted that the RS relied upon a substantiated command and NCIS investigation, along with your admission to the misconduct. Therefore, the Board determined that the RS relied upon sufficient evidence and provided adequate justification for the adverse performance trait marks and comments. The Board noted, too, that the RS did not mention the NJP proceedings, and determined that the RS did not use the fitness report as an alternative to the proper disposition of misconduct. The Board thus determined that your fitness report was properly written and issued according to the EVALMAN. Based on the foregoing determinations, the Board found that your name was properly removed from the FY 2021 Navy Active Duty Lieutenant AFQOL. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice in your case. 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,

4/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]