



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. 5912-23
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 17 August 2023 and 14 September 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.

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 remove the Deputy Chief of Naval Operations for Personnel, Manpower, and Training Action Memo of 6 October 2002 (Action Memo) from your record. The Board considered your contention that the existence of the Action Memo and its delayed entry in your record has had an outsized impact on your career advancement. The Action Memo was entered in your record during April 2023 and was derived from a Report of Misconduct (ROM) submitted by your Commanding Officer (CO) during April 2020. You also contend that inclusion of the Action Memo is a violation of MILPERSMAN 1611-010. Additionally, the Action Memo as written is unduly punitive, it captures negative remarks but omits positive recommendations contained in the ROM. You further contend that the process by which the Action Memo was derived and entered was unjust and unduly overshadows an otherwise stellar record of service. You claim that the Command Investigation occurred after

you transferred from the [REDACTED], without your presence or ability to witness or fully participate in the process. You also claim that, because of the Status in the Navy (SIN) letter, you and your chain of command had a reasonable belief that no follow-on administrative action was approved, therefore the ROM would not be included in your record. You argue that when your promotion was placed on hold and a Special Selection Review Board (SSRB) convened to review your promotion selection, the summary created for the board's review omitted any positive recommendations and served to unduly bias a selection board. Verbiage recommending "no delay in promotion," and the finding that, "there was no egregious or deliberate disregard to place personnel or equipment at risk" were not included. When the SSRB did not uphold your selection and the Action Memo was placed in your record, it once again omitted any positive recommendations contained in the ROM and will serve to unduly prejudice any board against you for administrative or statutory selection despite your otherwise excellent record.

The Board noted the Command Investigation into the facts and circumstances surrounding possible crankcase explosions and other mechanical failures onboard [REDACTED] during the ship's transit to [REDACTED]. The Board also noted the Action Memo to the Secretary of the Navy (SECNAV) requesting approval for the inclusion of the Action Memo in your record. The Action Memo summarized the events related to and leading to the ROM that Navy Personnel Command (NPC) received on 6 July 2020. The Board noted, too, that the SECNAV approved the recommendation and the Action Memo was included in your record. In addition, you exercised your due process rights by submitting a response to the Action Memo.

The Board determined that the Action Memo is valid and was properly filed in your record in accordance with MILPERSMAN 1070-170. In this regard, the Board noted that the CO, Surface Warfare Schools Command found that the preponderance of evidence substantiated allegations that you were derelict in the performance of your duties as Chief Engineer on diverse occasions between 1 March 2019 and 7 November 2019. The Board also noted that the SSRB convened to review your record and recommend that your promotion should not be sustained. The review of your record included any credible information of an adverse nature and the ROM that included favorable comments by your CO. The Board determined that the inclusion of the Action Memo will ensure that future selection boards have all of the facts related to the Command Investigation. The Board also determined the impact of the Action Memo on your future promotion opportunities is speculative and not based on evidence.

Regarding the Command Investigation, the Board found no evidence that the Command Investigation was invalid or conducted contrary to applicable guidance or regulations. The Board also noted that according to MILPERSMAN 1611-010, "the ROM or the RSP will only be included in the officer's OMPF if a follow-on administrative action is approved." The Status in the Navy letter also informed you that neither the SIN letter or ROM will be filed into your OMPF. The Status in the Navy (SIN) letter also specifically notified you that the determination regarding your requirement to show cause and the incident reported in the ROM "does not in any way preclude or limit the use of the information and opinion contained in the ROM in future administrative or other proceedings, to include but not limited to promotions (selection/confirmation)". The Board further determined that this determination did not preclude the CNO from submitting an Action Memo.

MILPERSMAN 1070-170 provides guidance for the inclusion of adverse material in the official record. Accordingly, adverse material is defined as any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. The information is considered credible if it is supported by a preponderance of the evidence. The Board determined that the Action Memo contains facts supported by credible information. Moreover, SECNAV was acting within his discretionary authority when determining that the facts substantiated in the ROM should be documented in your official record. The Board thus determined that the Action Memo was properly filed in accordance with MILPERSMAN 1070-170, which permits the inclusion of adverse material as long as the member was provided an opportunity to review the matter and submit a statement. In this case, you were afforded that right and your statement is included as a matter of record. The Board further determined that the timing of the submission of the Action Memo is not a basis for removal. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the Action Memo from your record. Accordingly, based on the totality of evidence, 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,

11/2/2023

