



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

█  
Docket No. 6475-23  
Ref: Signature Date



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 October 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 7 August 2023 advisory opinion (AO) provided by the Navy Office of Legal Counsel (BUPERS-00J) and your response to the AO.

The Board carefully considered your request to remove the 24 February 2023 non-judicial punishment (NJP). You also request restoration of your pay grade to E-6 and any associated pay and allowances. The Board considered your contention that the investigation was not thorough and showed bias towards the accuser. You also contend that your appeal and the Navy Inspector General (NAVIG) complaint focused on the NJP, while your issue was with the investigation that led up to the NJP. You claim that you were not directed or made aware to submit supporting documents before completion of the investigation, no one in your work section was interviewed, and you did not receive the proper information to appeal the complaint. You also claim that if the investigation was thorough and personnel from your department were interviewed, it would have been a different outcome. In response to the AO, you denied the allegations and noted that it is your understanding that only one person in your department was interviewed. However, her statement was discredited by the investigating officer and was deemed bias according to the final report.

The Board noted the 15 January 2023 Command Investigation (CI) substantiated allegations of sexual harassment. The Board also noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Articles 92 and 132. Specifically, on diverse occasions circa June 2022 until December 2022, you violated a lawful general order, by making unwanted sexual advances toward █ and made racial slurs, creating a hostile work environment. With the intent to retaliate against █ you wrongfully withheld a favorable personnel action by denying Permanent Change of Station leave. Your Commanding Officer (CO) found you guilty at NJP and awarded reduction in paygrade to E-5 and forfeitures of pay. The Board noted, too, that you appealed your CO's finding and the Deputy Chief of Naval Personnel denied your appeal.

The Board substantially concurred with the AO that your NJP is valid. In this regard, the Board noted that the CI included four witness statements, of those, one statement was from a Sailor from your department. According to the Judge Advocate General Manual, investigating officers are not bound by formal rules of evidence in gathering information, the investigating officer may collect, consider and include in the record *any* matter relevant to the investigation that is believable and authentic. The Board determined that the investigating officer's concern that the interviewed Sailor was biased, based on the totality of witness statements, is not an error or injustice. The Board determined your claim that there would have been a different outcome if the investigation was thorough and personnel from your department were interviewed, is conjecture and not supported by evidence. The Board also noted that you were afforded full due process in the form of a command investigation, NJP, and NJP appeal. You had the opportunity to point out deficiencies in the investigatory process during NJP and on appeal. As the fact finder at NJP, your CO weighed the merits of the case and relied upon a preponderance of the evidence, which included the CI and your statement. The Board determined that your CO acted within his discretionary authority, and conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.). As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP from your record or any associated relief. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicate in your application that you are the victim of reprisal. The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC § 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual

allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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

[REDACTED]