



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. 6495-23
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 applications on 31 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 applications, 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 Personnel Command (NPC) (PERS-32). 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 remove your Evaluation Report and Counseling Record for the reporting period 16 March 2022 to 21 July 2022, and to modify your evaluation report for the reporting period 22 July 2022 to 15 March 2023 by changing the block 47 retention mark from "not recommended" to "recommended." The Board considered your contention that the evaluation report ending 21 July 2022, was issued to remove your recommendation for advancement due to misconduct, it was issued prior to the convening of your administrative discharge board, you were retained by the board, and the final message from the Commander, NPC directed no further action be taken. You also contend that block 47 of the evaluation report ending 15 March 2023, was checked "not recommended;" however, your administrative

discharge board recommended no further action because you did not meet the basis for separation.

The Board, however, substantially concurred with the AO that your evaluation reports are valid and processed in accordance with the applicable Navy Performance Evaluation System Manual (EVALMAN). In this regard, the Board determined that the Reporting Senior (RS) properly documented your misconduct and provided justification for the 1.0 performance trait marks and the retention mark. Concerning your evaluation report ending 21 July 2022, the Board noted that block 43 indicates that you “violated UCMJ Article 112a” instead of Article 92, Uniform Code of Military Justice (UCMJ), for the wrongful use of HEMP-derived products in violation of OPNAVINST 5340.4E and ALNAV 74/20. Concerning your evaluation report ending 15 March 2023, the Board found no error in your RS’s mark not recommending you for retention. The Board also concurred with the AO that the administrative separation board’s decision not to separate you does not override the RS’s responsibility to evaluate and comment on your performance nor does it impact the validity of your evaluation reports. Moreover, the Board determined that administrative discharge boards are administrative in nature with the fundamental purpose of determining your suitability to serve on the basis of your conduct and the ability to meet and maintain the required standards of performance. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal or modification of the evaluations in question. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Finally, regarding the correction to block 43 for the evaluation report ending 21 July 2022 and a change to the retention mark for the evaluation report ending 15 March 2023, the Board noted that both are eligible for correction through an administrative change or the addition of supplemental material, and Letter-Supplement from the original RS. Such a change must be made by the RS within a two-year window from when the report is issued.

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,

11/21/2023

