

Uniform Code of Military Justice. Despite this finding, the Immediate Superior in Command determined to pursue the DFC.

The Board noted that during your assignment as the Detachment Officer-in-Charge (OIC) several PIs, Command Investigations (CIs), and an audit occurred between September 2021 to January 2022. These inquiries substantiated allegations that during your assignment as Detachment Officer-in-Charge (OIC) 27 missions were executed with unqualified personnel, fraudulent career sea pay (CSP) transactions were submitted for payment in the amount of \$13,742.00, and you submitted erroneously altered Regular/Periodic evaluation reports with forged signatures. The Board also noted that the Disciplinary Review Board (DRB) found that you directed that your name be added to the CSP eligible tracker along with other personnel that were not eligible. Your Commanding Officer (CO) documented your misconduct in a 28 March 2022 Report of Misconduct (ROM) and requested that you be DFC'd. The Board noted, too, that you were offered, but did not accept non-judicial punishment (NJP), and you were issued an adverse Detachment of Individual/Regular fitness report for the reporting period 1 November 2021 to 31 August 2022.

The Board determined that your CO's request for your DFC was valid and processed according to applicable regulations. In this regard, the Board noted that the request for DFC was processed on 28 March 2022 and you were not detached or transferred from the command until 31 August 2022, according to the available evidence and your detachment of individual fitness report ending 31 August 2022. The Board also noted that your CO submitted a ROM documenting your misconduct, requested your DFC, and your misconduct was accurately documented in your detachment of individual fitness report as required by MILPERSMAN 1611-020. The Board determined that your argument regarding the PRD on the original orders assigning you to the command during 2018 lacks merit. The Board also determined that your CO relied upon a preponderance of evidence that included PIs, CIs, and a DRB that substantiated misconduct. Moreover, your CO had independent and discretionary authority to determine whether you committed the misconduct. After a review of the evidence and your CO's request, the Deputy, Chief of Naval Personnel approved the request for your DFC due to misconduct. The Board further determined that the administrative command is not required to be co-located to take appropriate action on substantiated misconduct.

Concerning your complaint that you were reprised against after reporting that your senior officer sexually harassed and physically assaulted you during August 2021, the Board noted that your complaint was submitted on 4 March 2022, after completion of the PIs, CIs, ROM, and after you were offered NJP. The Board found no evidence that the DFC request was improper or requested as reprisal for your complaint and you provided none. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the DFC. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC section 1034. 10 USC section 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 section 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,

10/16/2023

