



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. 7043-23
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 December 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 29 August 2023 advisory opinion (AO) furnished by the Navy Personnel Command (NPC) (PERS-32), and the 29 October 2023 AO furnished by the Navy Office of Legal Counsel (BUPERS 00J). The AOs were provided to you on 30 October 2023 and 7 November 2023 respectively, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove the fitness report for the reporting period 17 May 2014 to 28 February 2015, and the original fitness reports for the reporting periods 1 March 2016 to 28 February 2017 and 1 March 2017 to 30 November 2017. You also request to remove the associated Performance Summary Reports (PSRs), all documents related to your non-judicial punishment (NJP), and that the Board recommend a Special Selection Board (SSB) to NPC. The Board considered that you had an incident during 2014, which "led to a show cause and recommendation for detachment for cause" (DFC). You contend that the NJP and DFC were dismissed by PERS, you were subsequently transferred at your permanent change of station (PCS) date, the show cause was dismissed, and although your Fiscal Year (FY) 2015 promotion to lieutenant (LT) was withdrawn, your promotion to LT was reinstated during December 2017 with back pay and 1 October 2016 date of rank. You also contend that, outside of documenting the incident, the new Reporting Senior (RS) should have submitted a special vice regular report. You assert that retaining the documents provides an unjust impact to promotion for a single incident, regardless of your sustained superior performance. You claim that your performance since that time has been exemplary as noted in the Navy and Marine Corps Commendation Medal, exceptional performance reports, and being nominated/selected as the "POMI" of the Year for 2019. In addition,

removing these fitness reports and adverse materials from your record allows you to receive fair and equitable look for promotion, selection for schools, and longevity in the Naval Service.

The Board noted that you received NJP for violating Uniform Code of Military Justice Articles 92, 107, and 133 for wrongfully issuing, by signing a Light Duty/Sick in Quarters Chit which was not within your authority to provide to a Sailor not in your command. The Board also noted that the Assistant Secretary of the Navy (ASN) determined that you would be retained for future naval service and that NAVADMIN 305/17 announced your promotion to LT with a 1 October 2016 date of rank.

The Board, however, substantially concurred with the AO's that your fitness reports and adverse material were properly filed in your record in accordance with the applicable Navy Performance Evaluation System Manual (EVALMAN) and MILPERSMAN 1070-170. In this regard, the Board noted that NJP and associated documents constitute adverse material. Adverse material is authorized to be filed in your permanent record as long as you were afforded an opportunity to review and submit a statement concerning those matters. The Board also noted that you availed yourself of this opportunity and your statement is filed with those matters in your permanent record. After a review of the available evidence, the Board found no evidence that your NJP, DFC, or other matters were dismissed by PERS. The Board determined that your retention in the Navy, transfer at your PCS date, and back dated promotion to LT were favorable actions, but are not sufficient to remove matters documenting properly adjudicated misconduct.

Concerning the removal of your fitness reports, the Board determined that your RS properly issued the fitness report ending 28 February 2015 documenting your NJP. Your RS was not required to submit a special fitness report to document your misconduct, the EVALMAN provides RSs with the discretionary authority to determine when a special or regular fitness report is necessary to document misconduct. The Board also determined that your revised fitness reports constitute supplemental material. According to the EVALMAN, "supplemental material does not replace the original report on the member's OMPF, nor does it change the information on the member's PSR; it only supplements the original report." The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action or warranting a SSB. 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,

12/29/2023

