



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

█  
Docket No. 8379-23  
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.

The Board determined that your personal appearance, with or without counsel, would 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 all documents associated with your civil action investigation. The Board considered your contention that the civil action has since been dismissed by the civilian justice system. Since the completion of your board of inquiry (BOI), it was annotated that this matter did not warrant separation. You also contend that all information pertaining to the civilian case has been expunged; therefore, your official record should be treated the same. You claim that the correction is needed because it is a detriment to your naval career. Further, you believe no promotion board will review your record for promotion to the next rank with such documents. You noted the final paragraph of the decision letter directing a correction to your record by a previous Board (NR20230002076), specifically that, "Any materials or entries inconsistent with or relating to the Board's recommendation be corrected,

removed, or completely expunged from Petitioner's record. . ." It is your assertion that this statement applies to your current application.

The Board, however, determined that the 8 October 2019 Final Civil Action Report (FCAR) is valid and all related documents were properly filed to your record. In this regard, the Board noted that the Commanding Officer,  submitted a FCAR in accordance with MILPERSMAN 1611-010. Commanders are directed to keep PERS-834 informed of the status and disposition of all misconduct cases where an officer has been arrested in connection with or charged with a civil offense. This is required regardless of any diversionary, mitigating, or downgrading actions by the court, the case must be administratively processed if the original commission of the civilian offense could have been punished by confinement of six months or more. In addition, when a sentencing has been adjudged, the commander must submit a FCAR via PERS-83. The Board also noted that MILPERSMAN 1070-170, 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.

Concerning the expungement of your civil record, the Board determined that regulations pertaining to the expungement and removal of civil documents does not apply to documents properly filed in a service member's official record. The Board also determined that the paragraph pertaining to applicable corrections for Docket number NR20230002076 was specifically related to any action relating to the correction of your date of rank and did not extended to the removal of material not included in the application or the FCAR. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the documents in question from your record. 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,

11/7/2023

