



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. 8410-23
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 5 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 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 16 October 2023 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-32). The AO was provided to you on 18 October 2023. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 your Evaluation Report & Counseling Record (Eval) for the reporting period 21 October 2022 to 16 August 2023, and the withdrawal for advancement recommendation. The Board considered your contentions that the adverse Eval and withdrawal of promotion were used as disciplinary tools not according to applicable policy. You also contend you were charged with Article 107 without sufficient evidence to prove that your intentions were to deceive. The Board also considered your belief that your 16 years of service should not be capped off due to a few months of adversity.

The Board, however, substantially concurred with the AO that the Eval is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (EVALMAN)

guidance. Specifically, the Board noted that pursuant to the EVALMAN, it allows the Reporting Senior (RS) to comment on misconduct whenever the facts are clearly established to the RS's satisfaction. In this case, the Eval is adverse and the RS provides appropriate justification by documenting your receipt of nonjudicial punishment (NJP) on 8 August 2023 for violation of Articles 92 and 107 of the Uniform Code of Military Justice. In regards to your claim that you were charged with Article 107 without sufficient evidence, the Board determined you provided insufficient evidence, other than your statement in support of this contention. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption.

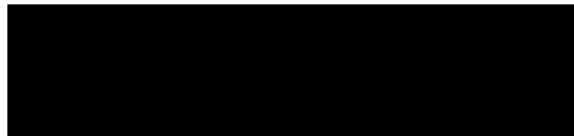
You also marked in your application "other mental health" as an issue/condition related to your request. The Board noted on 6 October 2022 you were seen by medical regarding depression. In the notes written by your primary care provider, he indicated that you presented to medical for medication refill prior to a six-month deployment and you were stable on medication. Thus, the Board determined there was insufficient evidence to conclude that your depression was contributed to your misconduct.

Finally, regarding your belief that your 16 years of service should not be capped off due to a few months of adversity, the Board noted this does not excuse the misconduct, which resulted in your NJP. As a result, you were subsequently issued the contested Eval as well as the withdrawal for your advancement. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined 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,

1/5/2024



Deputy Director

Signed by: 