



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. 8641-23
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 application on 1 February 2024. 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 23 October 2023 Advisory Opinion (AO) provided by █
Command █

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the Evaluation & Counseling Record (EVAL) for the reporting period 16 November 2021 to 15 November 2022 and the statements associated with the EVAL. You contend the report should be removed because it was “retaliation for filing an IG and obtaining congressional support against [f]ive men who harassed [you].” You further explain that you received “[d]eath threats shared on an open chat forum for all sailors to see” and were “placed in a perilous position, forced to work behind closed doors to protect [your]self from the five males hurting [your] career and well-being, all for doing the right thing.” Additionally, you contend the former Commanding Officer (CO), who is known for his uncontrollable anger as evidenced by his arrest for strangling his parents, wrote the EVAL and statement with “malicious intent to cause harm with false information to ensure that [you] would never be promoted” because your “[t]wo IGs, Congressional, an 1150 article and congressional oversight” caused his promotion to be put on hold.” Lastly, you also request a special board for

Fiscal Year 2024 (FY24) Chiefs promotion because “[w]ith all this on [your] shoulders, [your] mindset was not focused on the Chief’s exam for obvious reasons.”

The Board noted the [REDACTED] AO recommended removal of the EVAL and statements because the CO/Reporting Senior (RS) did not justify the decline from “Early Promote” to “Promotable” in block 43 “even though the RS provided an explanation in the endorsement statement.” The Board, however did not concur with the AO’s decision as it pertains to the RS’s statement. Specifically, the Board noted the RS erred by not justifying the decline in promotion recommendation in block 43 of the EVAL but determined the RS corrected the error in his 24 January 2023 response to your EVAL statement. The Board further noted that the EVAL and statements, when reviewed by PERS-32 prior to inclusion in your Official Military Personnel File, were deemed compliant with the governing BUPERSINST 1610.10F. Looking at the RS’s response, the Board, relying on the presumption of regularity, determined the explanation justified the decline in your promotion recommendation. Further, the Board considered your contention the declining promotion recommendation was done in retaliation for protected communications but determined the performance and conduct described by the RS in his statement are presumed to be accurate and therefore sufficiently support his decision. Although you submitted documents regarding your CO/RS’s arrest and photos to support your contentions regarding your work environment, the Board determined this evidence did not overcome the presumption the RS accurately described your “drastic decline in performance” to include your removal as Leading Petty Officer and Command Managed Equal Opportunity officer after a Command Investigation concluded you abused those appointed positions; your failure to “honestly self-assess and assure [your] Medical Department passed inspection; “sharing PHI with unauthorized personnel” and the “non-compliant” received in programs you were responsible for as a collateral duty. Absent sufficient evidence to overcome the presumption that the RS accurately described the actions justifying his decision to mark you as “Promotable” vice “Early Promote,” the Board concluded the RS, in his responsive statement, corrected the original error, rendering the EVAL, your statement, and the RS’s response as valid. Additionally, the Board considered your request for a special board but, noting you provided no indication of whether you were board eligible for the FY24 E-7 board, determined you have provided insufficient evidence to establish an error or injustice warranting a special board. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting your requested relief.

The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of Title 10 U.S. Code § 1034. This Title 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 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, [REDACTED] [REDACTED] 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 Board 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 Board, 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,

3/1/2024

