



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. 9212-23
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 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 1 November 2023 advisory opinion (AO) provided by the Navy Personnel Command (PERS-32). The AO was provided to you on 7 November 2023, 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 the evaluation report for the reporting period 16 November 2022 to 23 February 2023. The Board considered that you were assigned temporarily for more than 90 days and the temporary command issued you a concurrent evaluation report for the same reporting period. You contend that your regular command was not supposed to submit an evaluation, they did not inform you, and the evaluation report is unsigned. You also contend that a member cannot have two evaluations for the same reporting period. You claim that you submitted two Inspector General (IG) complaints against the leadership at your regular command and you are still experiencing reprisal, even after transfer.

The Board, however, substantially concurred with the AO that your fitness report is valid as filed, in accordance with the applicable Navy Performance and Evaluation System Manual (EVALMAN). In this regard, the Board noted that your evaluation report is not observed (NOB) and does not contain

any performance trait marks or negative comments. The Board also noted that the RS comments indicate that the evaluation report was submitted for continuity purposes upon your detachment and you were on temporary duty for the entire reporting period. The EVALMAN provides that concurrent reports provide a record of significant performance for members fulfilling temporary additional duty orders, concurrent reports are optional unless directed by higher authority, and the regular RS must countersign the concurrent report. The Board determined that the RS had no requirement to notify you about the evaluation report, and while your signature is desired, your signature on a NOB report is not required. Moreover, the Board found no evidence of a regulation prohibiting the submission of a regular and concurrent evaluation report during the same reporting period and you provided none. 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 that your request does not merit relief.

You also indicate in your application that you are the victim of reprisal. The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 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 § 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,

12/29/2023

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