



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. 9288-23
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 11 January 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 9 November 2023 advisory opinion (AO) furnished by the Navy Personnel Command (NPC) (PERS-32). The AO was provided to you on 16 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 14 September 2018 to 13 May 2019. You also request to remove your nonjudicial punishment (NJP), and 14 May 2019 and 9 July 2019 Administrative Remarks (page 13s). In addition, you request a recommendation for promotion to Chief Petty Officer (CPO/E-7) effective 14 May 2019. The Board considered your contentions you were not appraised of your Article 31(b), Uniform Code of Military Justice (UCMJ) rights prior to initial questioning, and your statement was used during NJP constituting a material error. You also contend that the

evidence of you admitting to falsifying documents were never presented to you, constituting a basis to invalidate the NJP.

The Board noted that you received NJP for violating UCMJ Articles 92 and 107. The Board also noted that prior to NJP, you acknowledged the Notification and Election of Rights informing of your rights under Article 31(b), UCMJ and your right to examine documents or physical objects against you. You also accepted NJP, you pled guilty to the offenses and specifications at NJP, acknowledged your right to appeal, and you did not to appeal your commanding officer's (CO's) finding of guilt at NJP. The Board determined that your CO acted within his discretionary authority and had sufficient evidence, including a preliminary inquiry when determining that your NJP and revocation of your promotion recommendation were warranted. The Board also determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.) and any purported failure to advise you of your rights during the investigation, only made your statement inadmissible at a court martial, however the use of your statement a NJP was not prohibited.

Concerning the removal of your evaluation report, the Board substantially concurred with the AO that your evaluation report is valid as filed, in accordance with the applicable Navy Performance Evaluation System Manual (EVALMAN). The Board determined that the EVALMAN permits the inclusion of comments on misconduct whenever the facts are clearly established to the Reporting Senior's (RS's) satisfaction. In this case, your RS provided sufficient justification for the adverse performance trait mark and properly documented your NJP for violating UCMJ Articles 92 and 107. The Board also determined that your NJP Report and page 13s were properly filed in your record according to MILPERSMAN 1070-170. 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 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,

1/25/2024

