



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

██████████  
Docket No. 10156-23  
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of his naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found that the evidence submitted was 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 30 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 26 April 2023 Advisory Opinion (AO) provided by the Office of Legal Counsel (PERS-00J) and your response to the AO.

The Board carefully considered your request for reconsideration for promotion to Lieutenant Commander (LCDR/O-4) and Commander (CDR/O-5). The Board also considered your request for full retirement benefits, maximum allowable backpay, terminal leave based upon accrued leave over the years, and consideration of [any] funds [that would have] been invested in the Thrift Savings Plan (TSP). The Board considered your assertions that while serving aboard the ██████████, you experienced a toxic work environment and endured harsh criticism and racism which contributed to a decline in your mental health. The Board also considered your claim that the Commanding Officer (CO), ██████████ did not have to kick you out of the Navy. You further assert that the issuance of a substandard performance appraisal and delay in signing the evaluation months after the due date contributed to your non-selection to Lieutenant Commander (LCDR) because you did not receive a fair opportunity. Finally, the Board also considered your assertion that during the timeframe in question you submitted an equal opportunity complaint as well as your claim that you were a whistleblower and you were not protected.

However, the Board substantially concurred with the AO. The AO noted you provided insufficient evidence to overcome the presumption that the CO improperly discharged her official duties. Specifically, the AO noted in the Detachment for Cause request issued on the same day as the fitness report, the CO included several examples of your unsatisfactory performance. Thus, the Board noted the deficiencies identified by neutral parties coupled with the need to place you on liberty risk could have understandably lowered the CO's overall impression of your performance. In regards to your contention that the CO fostered a toxic work environment that included harsh criticism and racism, the AO noted that although the CO was harsh and disrespectful to her crew according to several accounts, your contention still fails to establish any deceitful or malicious intent on the part of the CO towards your work performance.

Regarding your contention the substandard fitness report and delay in signing the Fitness Report contributed to your non-selection to LCDR, the AO noted that your first in-zone consideration for promotion to LCDR was in 2006, which predated your time aboard the [REDACTED]. Moreover, the Board noted that your record contains significant derogatory material, specifically, while attached to [REDACTED] in May 2004, you disregarded a traffic light and hit a [REDACTED] motorcyclist with your car while driving under the influence of alcohol in your present grade. Although the UCMJ charges were dismissed and you were not required to show cause, the Final Civil Action Report describing the incident and subsequent guilty verdict by the [REDACTED] Central District Court is part of your permanent record. Although, your CO dismissed all military charges related to the incident and you were not required to show cause, the Board concluded, more likely than not, this was the reason for your failure to select.

Moreover, the Board noted that your contentions fail to establish a causal relationship between your CO's actions and your failure to select to O-4. Specifically, the Board noted that you were fairly and properly considered for promotion to LCDR numerous times while on Active Duty between Fiscal Years (FY) 2005 through 2008, and failed selection. Furthermore, the Board determined your claim the CO's actions directly contributed to your failure to select are conjecture the Board cannot validate. Finally, the Board does not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or Secretary of Defense.

Regarding your claim that you submitted an Equal Opportunity Complaint during the timeframe, the Board noted, on 12 July 2007, an investigation concerning the equal opportunity complaints against the CO, [REDACTED] was conducted. The Board further noted that the Investigating Officer (IO) determined there was no evidence to suggest you were detached for reasons of race. Likewise, the IO indicated he could find no instances where your treatment by the CO was different than her treatment of other Department Heads. Finally, the IO noted that although you were likely counseled more than other Department Heads, based on interviews and a review of the Detachment for Cause (DFC) package, this was warranted based upon your professional performance. Thus, the Board determined you provided insufficient evidence in support of this claim.

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."

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. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting your promotion, retirement, back pay, or terminal leave. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request concerning TSP funds, the Board only has the authority to correct military records. Therefore, the Board has no authority to consider or grant your request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require that you 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,

2/28/2024

