



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

██████████
Docket No. 840-24
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 12 March 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 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 1 February 2024 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-32), as well as your response to the AO.

The Board carefully considered your request to remove your Evaluation Report & Counseling Record (Eval) for the reporting period 16 September 2022 to 15 September 2023. The Board considered your contentions that the eval is unjust due based upon the fact that your Detachment for Cause (DFC) was not adjudicated. The Board also considered your contention that you did not receive non-judicial punishment, court-martial, nor were you referred to an administrative separation board. The Board also considered your assertion that you disputed the allegations made against you.

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 (PES) guidance. In this regard, the Board noted pursuant to BUPERSINT 1610.10E (EVALMAN), Evals should consider misconduct that has been established through reliable evidence to the reporting seniors (RS) satisfaction. In your case, the Eval is adverse with 1.0 performance trait grades in blocks 35 and 37. As a result, the RS provided justification for the adverse report in block 41 by stating that you were removed from the Platoon due to fraternization and causing a hostile work environment. Furthermore, the AO noted that the RS did not comment on an investigation

within the Eval and mentions in his endorsement letter, dated 20 October 2023, that investigatory actions concluded prior to the issuance of the adverse eval. Finally, the AO notes that although you did not receive judicial determination of misconduct, it has no bearing over the RS authority to document the misconduct in your eval.

In regards to your contention that you did not receive NJP, Court-Martial, nor were you referred to an ADSEP board, the Board further noted the CO provided sufficient justification concerning the adverse nature of the eval in his endorsement letter. Specifically, the RS noted that after considering the established facts of the case in light of the Uniform Code of Military Justice (UCMJ) that neither court martial nor administrative separation were warranted in your case. However, as the facts of misconduct in this case were “clearly established to [my] satisfaction,” the RS included judicious comments regarding misconduct pursuant to the EVALMAN and, given the facts in evidence, stated he could not offer a 3.0 for Blocks 35 or 37. In response to the AO, you provided your supplemental statement, dated 18 November 2023, for the Board to consider adding it to your official record. However, the Board determined that you have not yet exhausted your administrative remedies in accordance with EVALMAN to have the statement added to your official record. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the Eval from your record. 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, however, determined that 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,

3/21/2024

