



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

[REDACTED]
Docket No: 751-17
OCT 12 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 June 2017. 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.

In June 2009, the [REDACTED] initiated an investigation into allegations that you sexually abused your eldest daughter, and determined by preponderance of the evidence, that you were a Level I Sexual Abuse Offender. However, the [REDACTED] Attorney's Office reviewed the investigation and [REDACTED] findings and declined to prosecute. In July 2010, the [REDACTED] initiated another investigation into allegations that you sexually abused your eldest son. The [REDACTED] later disposed the allegations as "unable to investigate" due to the son's inability to conduct a forensic interview. The [REDACTED] Attorney's Office reviewed the investigation and the [REDACTED] findings and declined to prosecute. In April 2011, you settled the divorce proceedings with your then-wife and the appeal of the [REDACTED] findings regarding your eldest daughter's accusations. You agreed to a reduced finding as a Level II Sexual Abuse Offender with no admission of liability.

In February 2012, the [REDACTED] received a complaint that you sexually abused your youngest daughter and infant son. The allegations were determined to be unfounded. Also in February 2012, the [REDACTED] received a complaint of new sexual abuse allegations made by your eldest son. The [REDACTED] determined, by preponderance of the evidence, that you were a Level I Sexual Abuse Offender. You appealed, and the finding was overturned due to no facts that show by preponderance of the evidence that sexual abuse occurred.

On 7 November 2014, the Commanding Officer (CO), [REDACTED] determined that allegations of sexual abuse did not support trial by court-martial due to insufficient evidence, which included the victims' decision to decline further participation. It was, however, determined that based on the totality of the evidence, probable cause existed to support the fact that you committed misconduct sufficient to support detachment for cause (DFC) and show cause proceedings. On 18 February 2015, the Commanding Officer, [REDACTED] submitted a report of misconduct recommending you not be detached for cause, but that you be required to show cause for retention, with no punitive or administrative action taken against you. On 4 May 2015, the Show Cause authority determined the incident reported did not meet the criteria for inclusion in your service record due to the lack of substantiated misconduct.

On 18 May 2015, the FY16 Active-Duty Navy Lieutenant Commander Line (Limited Duty Officer) Promotion Selection Board convened. You were selected with a 1 September 2016 projected date of rank. On 1 September 2015, you were notified that your promotion to Lieutenant Commander was being withheld. In a statement regarding your promotion, you stated, in part, that all allegations against you were false and an effort on the part of your ex-spouse to pressure you into providing more financial support; documents substantiating the allegations of sexual abuse surfaced shortly after you filed for divorce; the Navy Family Advocacy Program Case Review Committee (FAP CRC) determined that all allegations were unsubstantiated; the [REDACTED] Circuit Court dissolved all protective orders against you for your children and documented false allegations made by your ex-wife, and ordered your ex-wife to cease making false allegations against you to the Navy. You also provided notarized witness' account of your daughter's recantation and stated that during this personal challenge, you performed your duties, led your troops and executed the mission without falter or drop in performance. Your CO forwarded your statement, giving his strongest possible recommendation for your promotion to lieutenant commander. The Chief of Naval Operations (CNO) provided comments to the Secretary of the Navy (SecNav) regarding your promotion, stating in part, that although you have support from your chain of command, and agencies found insufficient evidence to substantiate allegations or to support a criminal case, you accepted a finding of a Level II Sexual Abuse Offender. The CNO also pointed out that this information was not available to the Promotion Selection Board when you were selected for promotion. The CNO recommended affording an additional period of time to observe your professional conduct, and that your name be removed from the FY16 Promotion List. On 9 January 2017, the SecNav removed your name from the FY16 Promotion List.

The Board, in its review of your entire record and application with supporting documentation, carefully considered your argument that the Naval Personnel Command (NPC) determined that the adverse information did not meet the criteria for inclusion in your record due to the lack of substantiated misconduct, and that the CNO based his recommendation to remove your name from the Promotion List on the assumption that adverse material was not provided to the Promotion Selection Board. The Board also considered your desire to remove from your official military personnel file the letter notifying you that your name was removed from the Lieutenant Commander Promotion List and for a retroactive promotion to Lieutenant Commander effective 1 September 2016. The Board concluded these factors were not sufficient to warrant relief,

given that you voluntarily accepted a finding that you are a Level II Sexual Abuse Offender, which, in part, resulted in your removal from the FY16 Promotion List. With regard to your argument that the adverse information did not meet the criteria for inclusion in your record, and that the CNO based his recommendation to remove your name from the Promotion List on the assumption that the adverse material was not provided to the Promotion Selection Board, the Board concluded that withholding your promotion pending a review of the adverse material was entirely appropriate in determining your qualifications for promotion, and the subsequent removal of your name from the Promotion List to allow additional observation time of your professional conduct was also appropriate. Accordingly, your application has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously 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,



Executive Director