



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. 10564-23
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 1 August 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 21 June 2024 Navy Personnel Command, Enlisted Force Plans and Policy (OPNAV N132C) Advisory Opinion (AO) and your 8 July 2024 rebuttal.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to reinstate your withheld advancement and “all subsequent fiduciary gains and entitlements including back-pay of all pay/BAH rate differences.” Additionally, you requested removal of the “erroneous Administrative Remarks which were neither provided to or signed” by you dated 23 January 2020, 24 February 2021, 30 April 2022, and 7 May 2022¹. You contend your advancement was only withheld due to your PFA failure and “due to closures, orders to shelter in place, lock-down and other COVID-19 policy compliance, no mock or official PRTs were held in 2020 and 2021,” which impacted your ability to pass a PRT and retain your Cycle 248 selection. Additionally, you contend you did not sign, nor were you provided, Page 13s regarding your PFA failure. Lastly, you contend relief is required by NAVADMIN 042/23.

¹ Your Official Military Personnel File does not contain the Page 13 entries generated in NSIPS on these dates.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

Before applying to this Board, you exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

In June 2017, you failed the Cycle 1-2017 Physical Readiness Test (PRT). In May and June of 2018, you failed both the Body Composition Assessment (BCA) and PRT for Cycle 2-2018. Lastly, on 16 November 2019 you failed the Cycle 2-2019 BCA.

Your 15 December 2020 profile sheet indicates you were selected for advancement to First Class Petty Officer (PO1) from the September 2020/Cycle 248 Navy Wide Advancement Exam (NWAE). On 17 December 2020, Commander, [REDACTED], [REDACTED] ([REDACTED]), [REDACTED], authorized you to assume the title and wear the uniform of a PO1.

However, on 24 February 2021, Chief Staff Officer (CSO), Navy [REDACTED], withheld your advancement due to PFA failure and, in accordance with BUPERSINST 1430.16G, notified Naval Education and Training Professional Development Center (NETPDC), as evidenced by the updated profile sheet dated 26 February 2021.

On 28 June 2021, [REDACTED] removed your authorization to assume the title and wear the uniform of a PO1 due to your failure to comply with PFA requirements.

You were selected for advancement to PO1 from the September 2021/Cycle 252 NWAE. On 10 December 2021, [REDACTED] authorized you to assume the title and wear the uniform of a PO1. On 16 June 2022, you were advanced to PO1.

Your petition was submitted to OPNAV N132C for an AO. By memorandum of 21 June 2024, OPNAV N132C recommended disapproval of your request. The AO noted NAVADMIN 042/23 “did not specifically or inherently authorize retroactive advancement” but allowed COs to “restore retention and recommendations outside of current policy that prohibited such action.” Additionally, the AO noted the advancement authority expired with the limiting date for the respective advancement cycle².

In rebuttal to the AO, you contend NAVADMIN 042/23 “neither specifically or inherently authorizes nor restricts retroactive advancement” so the Board should apply the guidance “in the way that is most favorable” to you and allow for an exemption to policy. Specifically, you contend that under NAVADMIN 042/23, BUPERSINST 1430.16G paragraph 715e³ no longer applies “if it is the only reason for withholding advancement.” Further, you contend the CO’s frocking “must be seen as the CO requesting revalidation of advancement.” Specifically, you attempt to argue that, per paragraph 710, a CO may frock eligible enlisted personnel under MILPERSMAN 1420-060 but the member may decline frocking. However, “[b]y frocking

² Per BUPERSINST 1430.16G, the September E4/5/6 advancement cycle limiting date is 30 June of the next year.

³ In your rebuttal, you note 715e but the correct paragraph is 715f which states “personnel who have failed to meet the physical readiness standards as outlined in OPNAVINST 6110.1” are ineligible for advancement.

member and not allowing declining of frocking,” the CO is indicating the “member was eligible and supported the promotion.” Additionally, you contend the withholding was not properly completed because you did not sign or receive either the Page 13 or a copy of the letter sent to NETPDC nor were you aware of the documents, making the validity of the documents questionable. Your AO rebuttal also noted you had never received a derogatory evaluation and have recently become an Assistant Command Fitness Leader. As an enclosure to your rebuttal, CO, [REDACTED], provided the Board with a Letter of Recommendation (LOR) in which he states “[i]f interpretation of NAVADMIN 042/23 allows, I would endorse a Board for Correction of Naval Records decision to retroactively reinstate [Petitioner’s] advancement to her initial selection date from the [NWAE] cycle 248.”

The Board carefully considered your request for reinstatement of your withheld selection to PO1 from the September 2020/Cycle 248 NWAE. The Board noted the CO’s Page 13 withholding your selection, that was generated in NSIPS on 24 February 2021, is not in your OMPF. However, BUPERSINST 1430.16G requires the CO to notify NETPDC via email and indicate compliance with paragraph 722a, which requires a Page 13 service record entry, prior to NETPDC forwarding verification of the withholding via profile sheet. Therefore, relying on the presumption of regularity, the Board determined a valid Page 13 was provided to NETPDC prior to its issuance of a revised profile sheet indicating your advancement had been withheld and concluded your advancement to PO1 in Cycle 248 was properly withheld.

Additionally, the Board noted NAVADMIN 042/23 authorizes a one-time reset of all PFA failures which allows enlisted Sailors to be counted as having zero past PFA failures prior to 16 February 2023 when considering authority to reenlist, advance, promote, or execute other career continuation transitions. Additionally, the NAVADMIN “empowers COs to restore retention and advancement recommendations as a modification to current policy requirements...which mandate their removal after subsequent PFA failures.” The Board noted COs retain the inherent authority to recommend – or not recommend – Sailors for advancement and retention but, the NAVADMIN no longer makes it a mandatory requirement for a CO to pull his recommendation for advancement or retention due to physical fitness failures. The Board considered your current CO’s LOR but declined to substitute his recommendation for that of the CO who withheld your advancement based on the PFA failure. The Board also declined to interpret the CO’s decision to frock you as his indication he supported your promotion.

Therefore, the Board concluded there was insufficient evidence demonstrating a material error or injustice warranting a correction of your record. 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,

8/20/2024

