



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

██████████
Docket No. 580-24
Ref: Signature Date

██████████
██████████
██
██

Dear Petitioner:

This letter is in reference to your application for correction of your 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.

A three-member panel of the Board, sitting in executive session, considered your application on 26 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 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 Advisory Opinion (AO) provided by the Office of Legal Counsel (PERS-00J) and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would 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 any adverse material from your Official Military Personnel File (OMPF) concerning the Command Investigation (CI). The Board also considered your request for advancement to Master Chief Petty Officer (E-9) and all back pay. The Board considered your contentions there were procedural errors and irregularities concerning the CI, specifically, your concerns regarding the "reinvestigation" of the allegations of sexual harassment towards a junior sailor. The Board also considered your assertion that your official record, which spans 24 plus years of military service, is devoid of any other instances of misconduct or negative conduct of any kind. Finally, the Board considered your contention that based upon the CI, your Navy Enlisted Classification Code (NEC) for Command Master Chief was removed, your evaluation & counseling record (eval) was reduced to "P" (Promotable) and you were not recommended for Command Master Chief. Finally, the Board considered your

claim that, although you submitted a request for voluntary retirement, your decision to retire was anything other than voluntary given the totality of the circumstances.

The Board noted, on 5 June 2019, a Command Managed Equal Opportunity (CMEO) complaint concerning unwanted sexual attention was submitted against you. As a result, a CI was conducted in which the first Investigating Officer (IO) explained that every witness he contacted explicitly refused to make a voluntary statement, did not respond to multiple contact attempts altogether, or did not have personal knowledge of the Petitioner sexually harassing the victim or fostering a hostile work environment. Thus, the IO concluded allegations were not supported by a preponderance of the evidence due to lack of any corroboration of the allegations concerning sexual harassment and maltreatment of subordinates. Dissatisfied with the findings of the IO, the victim utilized the CMEO appeal process concerning the IO's findings that she was not sexually harassed. As such, on 27 February 2020, the Commanding Officer, appointed a new IO for a follow-on investigation into the allegations that were not fully investigated during the first CI due to witness unavailability. The newly appointed IO was able to incorporate interview statements from six witnesses who previously declined to be interviewed or provide a statement. Thus, the second CI substantiated the allegation of sexual harassment by a preponderance of the evidence pursuant to OPNAVINST 5300.13. On 15 May 2020, you appealed the substantiated finding and, after careful review, Commander, [REDACTED] denied your appeal on 20 October 2020. Next, you appealed the denial to the Office of the Secretary of the Navy (Manpower and Reserve Affairs (M&RA)) and, after consultation with the Acting Deputy Assistance Judge Advocate General for Administrative Law, your appeal was once more denied. The Principle Deputy, Assistant Secretary of the Navy, M&RA concluded the [REDACTED] acted in substantial compliance with relevant policies, did not abuse his discretion when acting on your appeal and concluded there was sufficient evidence to substantiate the allegation of sexual harassment against you.

In regards to your contention that there were procedural errors and irregularities concerning the CI, the Board substantially concurred with the AO provided by PERS-00J. In this regard, the AO noted that all of your claims regarding procedural errors and irregularities had been directly or indirectly raised during the appeal process. 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. Specifically, the Board determined the actions taken by the second IO and the extensive review by all commanders and officials in the CMEO complaint review process were correct and proper. In response to the AO, you further argue that your case was mismanaged and improperly decided. However, the Board considered your detailed response and determined that your chain of command, up to and including the Principle Deputy, ASN, M&RA, considered all the evidence of record and determined your claims are without merit. Therefore, the Board determined your arguments are conjecture that the Board cannot validate.

Regarding your contention that your Navy Enlisted Classification Code (NEC) for Command Master Chief was removed, your evaluation & counseling record (eval) was reduced to "P" (Promotable), and you were not recommended for Command Master Chief, the Board noted your last eval is not resident in your official record. Thus, the Board determined you provided insufficient evidence to support this claim.

Next, regarding your claim that if you had not voluntarily retired you would have been promoted to E-9, the Board noted you were properly considered and not selected by the Fiscal Year 2018 through 2021 selection boards. Further, the Board noted each selection board is charged with selecting those candidates for advancement who they deem to be the “best and fully qualified” amongst those eligible for consideration. Thus, the Board noted you provided insufficient evidence to support your claim that you “would have been promoted.” Thus, the Board determined you were properly considered and not selected for advancement to E-9 and determined your request for advancement to E-9 and all backpay does not merit relief.

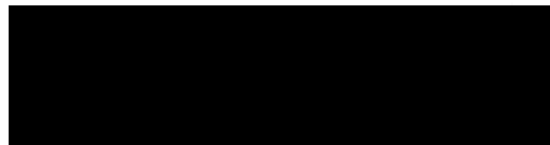
The Board also considered your claim that although you submitted a request for voluntary retirement, your decision to retire was anything other than voluntary given the totality of the circumstances. However, the Board found determined other than your personal statement, you also provided insufficient evidence to overcome the presumption of regularity that you submitted a voluntary retirement request.

Finally, regarding your assertion that your official record, which spans 24 years of military service, is devoid of any other instances of misconduct or negative conduct of any kind, the Board noted this does not excuse the misconduct, which caused your Commanding Officer to investigate the allegations of sexual harassment. However, although the IO recommended the issuance of a Letter of Instruction (LOI), the Board found no adverse material in your official record, and you provided none. Thus, the Board 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.

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,

4/12/2024

A large black rectangular redaction box covering the signature area.

Executive Director

Signed by:

A black rectangular redaction box covering the name of the signatory.