



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. 1526-24
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 application on 14 May 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.

The Board determined that a personal appearance with or without counsel will 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 the evaluation report for the reporting period 15 November 2021 to 13 December 2021, and 13 December 2021 Administrative Remarks (Page 13). You also request reinstatement to Chief Petty Officer (CPO/E-7) and back pay. The Board considered your numerous contentions regarding the command investigation, legal sufficiency review process, recommendation to withdraw your advancement, and administrative separation (ADSEP) board.

The Board, however, substantially concurred with the previous AOs and Board decision that your Commanding Officer (CO) had sufficient evidence of substantiated misconduct. Specifically, that your CO had the authority to determine whether to withdraw your recommendation for advancement, and the withdrawal of advancement is permanent. In this regard, the Board noted that

according to the Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve, “CO’s may withdraw a recommendation for advancement at any time, prior to the advancement effective date, if the member is determined to no longer qualify for advancement. Withdrawal of an advancement recommendation is the prerogative of the member’s current CO. COs are advised that the withdrawal of an advancement recommendation is a permanent action.” Additionally, when withdrawing a recommendation for advancement, COs must prepare a “Significant Problems” enlisted evaluation removing the member’s recommendation for advancement. An evaluation is the sole means of withdrawing a member’s recommendation for advancement and must be completed prior to requesting invalidation of an authorized advancement. The Board determined that your CO properly withdrew his recommendation for advancement due to his loss of confidence in you and according to applicable regulations. The CO had no requirement to wait until the completion of the Command Climate Specialist (CCS) legal sufficiency and, as noted above, your CO was only required to withdraw his recommendation for advancement prior to your advancement effective date, which he did.

Concerning your various contentions regarding the command’s procedural errors, the Board found insufficient evidence of procedural errors and/or unlawful command influence. According to the 14 December 2021 legal sufficiency review, OPNAVINST 5354.1G requires a Command Climate Specialist (CCS) to conduct a sufficiency review of all investigation reports into formal equal opportunity complaints prior to final determination. In your case, the CCS sufficiency review was completed on 25 Aug 2021. Based on potential additional misconduct revealed by the initial investigation, it was recommended that a new command investigation be conducted, which was completed on 30 Nov 2021. The legal sufficiency review found that the investigation complied with all applicable legal and administrative requirements, adequately addressed the complaints, and the evidence supports the findings of the investigating officer. Regarding your contentions that the command destroyed the administrative separation (ADSEP) board audio recording, sanctioned ADSEP board inaccuracies, and sanctioned the suppression of witness credibility to the investigating officer, the Board determined that the status of the ADSEP board audio recording constitutes a potential records management error by the command. However, the Board found no evidence that the presence of an audio recording would have affected the CO’s decision to withdraw the promotion recommendation. Further, the Board determined it does not infer any malicious intent by the command.

Moreover, the Board is not an investigative body and relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to the contrary, the Board 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 your new evidence/matters failed to demonstrate 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.

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,

5/29/2024

