



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. 1589-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 30 April 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. In addition, the Board considered the 23 February 2024 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-32), the 13 March 2024 Enlisted Career Progression Branch (PERS-803) AO, and your response to the AOs.

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 have your selection to Chief Petty Officer (E-7) be reinstated. The Board considered your contentions that your command failed to follow procedures outlined in the BUPERSINST 1430.1G and BUPERSINST 1430.10F. In this regard, you contend that you uncovered administrative errors regarding the removal of your advancement; specifically, the Evaluation Report & Counseling Record (Eval) was not completed prior to requesting invalidation of the authorized advancement, it was not signed by you and there any explanatory phrase in the signature block, and the Eval submitted was not the same Eval provided to you when your current command requested a copy for your records. You also assert that, as of the filing of this request, neither version of the Eval has been entered into your official record. In response to the AO, you further assert the opinions do not address the violation for which you are seeking recourse. Specifically pursuant to the EVALMAN, an

evaluation is the sole means for withdrawing a member's recommendation for advancement. You further claim that your leadership was haste to remove your advancement before the Chief Petty Officer pinning date (29 September 2024) and, as a result, they ignored all of the requirements to properly remove your advancement to E-7. Finally, you assert that you have been victimized and re-victimized by the leadership of this installation.

The Board noted, on 15 September 2023, the Commanding Officer (CO) imposed Non-judicial Punishment (NJP) for violation of Article 92, Failure to Obey an Order or Regulation. Specifically, for an unduly familiar relationship with a Senior Chief Petty Officer (E-8). As a result of NJP, you were reduced in rank (E-5). Subsequently, on 19 September 2023, the CO issued you a NAVPERS 1070/613 (Page 13) notifying you that your advancement to E-7 was being withdrawn due to your recent NJP. Additionally, on 15 September 2023, you received a special eval capturing the NJP and your reduction in paygrade. On 24 September 2023, you submitted an appeal of NJP to the Commanding Officer, [REDACTED] ([REDACTED]). In your appeal, you claim the punishment imposed was unjust and disproportionate to the offense and your claim that the previous Triad was aware of your relationship with the E-8 and did nothing about it, the command violated your rights, and you should not have been reduced to the paygrade of E-5 since your promotion to E-7 was withdrawn. On 19 January 2024, the Commander, [REDACTED] denied your appeal. In this regard, the Commander determined that your CO did not abuse his discretion in his factual findings or the punishment awarded and he further asserts that Navy policy is very clear on engaging in unduly familiar relationships.

Thus, the Board substantially concurred with the AO's. The Board noted PERS-803 determined that your reduction in rank to E-5 was completed during the "SELECTEE" (frocking) status to E7, therefore your reduction in rank from E-6 to E-5 is valid. Consequently, it also rendered your advancement to E-7 invalid. The Board also noted that you accepted NJP and exercised your right to appeal as was your right to do. Moreover, the Commander, CSG-1 considered your appeal and determined your CO did not abuse his discretion in his factual findings or the punishment awarded. Thus, the Board determined the CO had sufficient evidence, acted within his discretionary authority, and conducted your NJP pursuant to the Manual for Courts-Martial (2019 ed.).

In regards to your contention that your command failed to follow procedures outlined in the BUPERSINST 1430.1G and BUPERSINST 1430.10F. The Board noted, although the Eval is invalid and currently in a rejected status, it does not change the fact that you were properly reduced to E-5 prior to the advancement date or effective date, which ultimately invalidated your advancement to E-7.

In regards to your claim that your leadership was haste to remove your advancement before the Chief Petty Officer pinning date (29 September 2024), the Board noted the EVALMAN states the CO may withdraw a recommendation for advancement at any time, prior to the advancement effective date, if the member is determined to no longer qualify.

In addition, the Board noted you checked the "PTSD," "Other Mental Health," and "Reprisal/Whistleblower" boxes on your application but chose not to provide supporting evidence of your claims. Therefore, the Board found insufficient evidence any of these issues or

conditions were related to your request. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board determined 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.

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 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,

5/20/2024

