



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. 1789-24
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 23 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, as well as the 29 February 2024 advisory opinion (AO) furnished by the Navy Personnel Command (NPC) (PERS-32), the 5 March 2024 AO furnished by NPC (PERS-80), and your response to the AOs.

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 fitness report for the reporting period 1 October 2021 to 28 April 2022 and your Fiscal Year (FY) 2023 and 2024 failures of selection (FOS). You also request the convening of a FY 2023 Chief Warrant Officer-3 (CWO3) Special Selection Board (SSB). The Board considered your contention that there is information in the contested fitness report that should not be there. The Navy Performance Evaluation System Manual (EVALMAN) states not to include comments regarding non-judicial punishment (NJP) unless there has been a finding of guilty or a punishment awarded. You also contend the NJP Memorandum states the Commanding Officer (CO) found you not guilty and the same comment is stated in the fitness report. The Letter of Instruction (LOI) was awarded after the NJP only to document what happened because it was not supposed to be included in the fitness report. You claim the information contained in the fitness report is prohibiting you from advancing to the next grade.

In response to the AO, you contend the Reporting Senior (RS) acknowledged that you were not guilty of the charges and dismissed the charges without punishment, but the Commanding Officer (CO) still thought your judgement was poor. You claim there are three potential interpretations of the RS's comments. Despite this lack of clarity, it is clear that the fitness report is contrary to Navy Policy and the CO's intent has had unintended negative consequence on your career.

The Board, however, substantially concurred with the AO that your fitness report is valid as written and filed, in accordance with the applicable EVALMAN. In this regard, the Board noted the LOI and the RS block 41 comments noting the command investigation, Captain's Mast, and his belief that you exercised failures in judgment, which reduced his confidence in your judgment. The Board determined that the EVALMAN authorizes RSs to provide specific comments when the comments are a significant part of the member's duties or displays particularly strong or weak performance. Additionally, RSs are authorized to comment on misconduct whenever the facts are clearly established to the RS' satisfaction. Additionally, RSs are charged with commenting on the performance or characteristics of each member under their command and have the discretionary authority to determine what material will be included in a fitness report.

Concerning your request for a SSB, the Board noted that you were properly considered, and not selected for promotion by the FY 2023 Navy Active-Duty CWO3 Promotion Selection Board (PSB). The Board substantially concurred with the AO that the contested fitness report brought your character into question, and promotion board members use their judgment to determine if the candidates are fully qualified based upon the totality of the record and the language in the convening order. The Board determined that your fitness report was properly considered by the PSB and the board processes used to select the candidates that are fully qualified was lawful and in accordance with policy. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting a change to 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,

5/14/2024

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