



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



Docket No. 2219-24

Ref: Signature Date



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 applications on 21 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 18 March 2024 advisory opinion (AO) provided by the Navy Personnel Command (PERS-32) 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 for removal of the following documents from your official record: the fitness report covering the reporting period 1 February 2022 to 31 January 2023, Report of Misconduct (ROM) and all endorsements dated 16 February 2023, Board of Inquiry (BOI) Report of 8 June 2023, Detachment for Cause (DFC) letter of 18 September 2023, and the Status in the Navy memorandum of 23 October 2023. The Board considered your contentions concerning the adverse effects these documents have had on your career and your status in the Navy present a clear injustice. The Board also considered your assertion that your exemplary service record is now tarnished, and the adverse fitness report and Field Code 17 present hurdles you may not overcome prior to consideration for promotion in May 2024. The Board considered your claim that the BOI finding of no misconduct indicates the board members

firm belief that the allegations were fabricated to have you removed from your position of leadership and that the DFC/Show Cause process was used as a disciplinary tool in violation of MILPERSMAN 1611-020.

The Board noted you were the subject of a Command Investigation after a formal sexual harassment complaint was filed against you. The Commander, [REDACTED] considered the investigation and found a preponderance of the evidence to substantiate the formal sexual harassment complaint. As a result, you were required to show cause for retention and subsequently Detached for Cause (DFC) due to misconduct. The BOI found that a preponderance of the evidence did not substantiate a basis for your separation and, on 23 October 2023, Commander, Navy Personnel Command [REDACTED] notified you that you were retained for naval service and the ROM was the basis for your DFC.

In regards to your request to remove the fitness report for the reporting period, the Board substantially concurred with the AO that the Fitness Report is valid as written and filed, in accordance with the applicable Navy Performance Evaluation guidance. In this regard, the Board noted that according to the 30 January 2023 ROM, you violated multiple articles of the Uniform Code of Military Justice through repeated and unwelcome sexual advances against your Senior Chief Petty Officer. The CO, [REDACTED] determined your actions undermined your authority as a naval officer, cast doubt on your ability to lead, and were prejudicial to good order and discipline and not in keeping with the professional expectations of a commissioned officer in the United States Navy. The Board noted that fitness reports may take into account misconduct that has been established through reliable evidence to the Reporting Senior's (RS) satisfaction and whenever the facts are clearly established to the RS satisfaction. In this case, a command investigation substantiated your misconduct, the facts were clearly established to the RS satisfaction, and the RS was within his authority to submit the adverse fitness report and to comment on your substantiated misconduct. The AO further notes the fact that the BOI did not support separation for cause, does not override the RS responsibility to evaluate and comment on your performance, nor did it determine the fitness report to be unjust. Finally, the Board noted, other than your personal statement, there is nothing in your petition that indicates the RS acted for illegal or improper purposes. Based on the foregoing, the Board found no basis for the removal of your fitness report.

In regard to your claim that the BOI finding of no misconduct indicates their belief that the allegations against you were fabricated, the Board determined that according to Title 10 U.S.C. section 1182, the BOI is convened to receive evidence and make findings and recommendations as to your separation for cause. Furthermore, the BOI is an administrative process that is not intended as, nor does it function as a method to overturn or invalidate other administrative or judicial actions.

Finally, in regard to your assertion that your exemplary service record is now tarnished and the adverse effects on your career and status in the Navy present a clear injustice, the Board determined your actions prior to the documented misconduct do not excuse your subsequent misconduct and warranted the CO's determination to issue the adverse materials or include them in your official record. 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. The Board found your evidence insufficient to overcome this presumption. 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.

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,

5/30/2024

