



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



Docket No. 2686-24
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 28 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 22 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 your fitness report for the period covering 1 November 2021 to 5 August 2022 as well as the fitness report for the period covering the reporting period 6 August 2022 to 30 May 2023. The Board considered your contentions that you were negatively evaluated on your performance during two complicated pregnancies, which resulted in the loss of a baby and goes against Navy Policy. You also claim that the Reporting Senior (RS) for the fitness report ending 5 August 2022 admits during a recording that he knows the fitness report he gave you will stop you from making O-5. Concerning the fitness reporting ending 30 May 2023, you contend the fitness report should be removed because it was in retaliation for reporting racial and pregnancy discrimination. Finally, you contend that, after the [command] investigation, you were isolated and treated poorly by the majority of khaki and your leadership and that when you attempted to speak with the RS about the fitness report he became

very hostile. In response to the AO, you provided a copy of the Command Investigation and further assert your request is based on your Commanding Officer (CO) abusing his authority with malicious intentions while disregarding pregnancy and equality. You also claim that you would not be able to contact your former command for any support or statements, nor could you withstand the stress all over again.

The Board noted, on 4 May 2022, you filed two Navy Equal Opportunity (EO) and Harassment Complaints for Bullying and Discrimination based on Race, Color, and Sex (Pregnancy). As a result, on 12 October 2022, a command investigation was conducted where in the opinion of the investigating officer (IO) your complaints concerning bullying were unsubstantiated and the allegations concerning discrimination on the basis of sex (pregnancy) were substantiated. However, on 7 March 2023, after thorough review of the EO and Harassment Complaints filed by the Petitioner as well as the investigation, all enclosures, and relevant instructions, Commander, [REDACTED] ([REDACTED]) did not concur with the opinion of the IO that you were discriminated against based on sex (pregnancy). In this regard, Commander, [REDACTED] determined the evidence provided throughout the investigation consistently illustrates the RS did not engage in any prohibited practice, but had identifiable, supportable, and permissible rationales for his decision to lower your leadership trait average. Further, the Commander determined, after careful review of all the evidence, which included the audio recordings that you provided, that the RS had identifiable, supportable, and permissible reasons for lowering the your leadership score, and that he was well within his discretionary authority as a Commanding Officer to do so. Thus, the Board agreed and determined that you provided insufficient evidence to overcome the presumption of regularity and determined the CO acted within his discretionary authority when he decided to lower your leadership grade on the contested fitness report.

Moreover, the Board substantially concurred with the AO that the Fitness Reports are valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. In this regard, the AO noted the fitness reports were not adverse and contained no adverse comments, performance traits, or promotion recommendation and there were no comments in block 41 pertaining to pregnancy or medical issues. Furthermore, the AO noted there was nothing that indicated the RS acted for illegal or improper purposes or that the fitness reports lacked rational support. The Board agreed and 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 the requested fitness reports. 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 also indicate in your application that you are the victim of reprisal. The Board also 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.

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,

6/16/2024

