



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

█  
Docket No. 6309-24  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 July 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.

Regarding your request for a personal appearance, 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 7 January 2019 non-judicial punishment (NJP), Letter of Admonishment, and related documents. You also request to remove the fitness report for the reporting period 1 March 2018 to 31 January 2019, failures of selection, and to be granted a Special Selection Board for Fiscal Years 2023 and 2024. The Board considered your contention that you were targeted by the commander, while on board █  
█, after an investigation due to the commander calling you homophobic slurs. You claim the commander provided a letter of recommendation for transfer into the Information Professional (IP) Community before this event. Once the investigation was complete, you received a fitness report stating you were below average. You also claim this targeting continued through verbal orders to enlisted and junior officers to ignore your guidance,

training, and orders, because you would lead them wrong. Upon being selected to transition to the IP Community, you were denied the opportunity to detach and attend IP Basic course multiple times; resulting in an environment during which the NJP occurred and the commander could prosecute you for it. You further claim that due to the toxic nature of the command and climate, you fell into what would later be diagnosed as a major depressive state.

The Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 134, for loitering on your post while assigned as Chief of the Guard. Specifically, on 6 December 2018, you were caught using your cell phone in your stateroom and discussing a mobile gaming app with an enlisted second class. According to the 15 January 2019 Report of NJP, you affirmed that you violated Article 134, UCMJ when questioned. The Board determined that your Commanding Officer (CO) acted within his discretionary authority and conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.). Moreover, your CO relied upon a preponderance of evidence that included witness statements and your admission to the offense. The Board also noted that you acknowledged the Report of NJP and indicated no desire to submit any matters for inclusion with the report.

The Board noted that your fitness report was marked 2.0 for the performance traits “Military Bearing/Character,” “Mission Accomplishment and Initiative,” and “Leadership.” Your promotion recommendation was marked “Significant Problems” and your RS justified the adverse marks and promotion recommendation in block 41 by documenting your NJP. The Board determined that your fitness report is valid as written and filed in accordance with the Navy Performance Evaluation System Manual.

Concerning your contentions that you were targeted the CO, the Board found no evidence, other than your statement, that your CO targeted you due to a purported investigation. The Board noted the statements you provided as evidence of the CO’s conduct but found the statements insufficient to support your contentions. Additionally, the Board found no nexus between your NJP and your contentions; again, noting that you admitted to your misconduct. 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 noted that you indicated “other mental health” on your application and claim that you fell into a major depressive state due to the toxic nature of the command and climate. The Board also noted that nine months after the NJP, you self-referred to address issues related to sense of self, struggles at work, struggles within relationships, an inability to set boundaries, and fear of being kicked out. After a review of the record, the Board found no evidence that your diagnosis was due to the command climate, nor is there any evidence of a nexus between your diagnosis and your NJP.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude that your NJP was imposed as reprisal in violation of 10 U.S.C Section 1034. In making this determination, the Board noted that you filed a complaint with the Fleet Cyber Command Inspector General on 14 September 2023; however,

because your complaint was not timely, the Inspector General did not take any action. Other than your statement, there was no evidence of reprisal. 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.

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.

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,

8/13/2024

