



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. 7055-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 16 July 2024, has carefully examined your current request. 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.

You previously applied to this Board to remove the fitness reports for the reporting periods 7 August 2021 to 21 January 2022 and 1 February 2022 to 9 August 2022 and were denied on 10 October 2023. The facts of your case remain substantially unchanged.

In your current request, you reiterate your desire to remove the fitness reports and you also request to be awarded a Meritorious Service Medal (MSM). The Board considered your contentions that the fitness reports significantly deviate from the norm, do not accurately reflect your performance, are inconsistent with your historical performance, and included no "5.0" performance rankings. You also contend the Board acknowledged your intention to submit a statement regarding the fitness report ending January 21, 2022, but noted no such statement was found in your record. You claim you provided a two-page written statement to the Reporting Senior (RS) and its loss should prompt an investigation. You further contend the significant demotion from Deputy Comptroller to performing menial tasks without a substantiated performance-related reason suggests potential discrimination and retaliation, contrary to the

Board's finding. Additionally, the guidance from "NMRTC ██████████, ██████████," states any officer holding a director position may be granted a MSM. Based on this directive, you believe you are entitled to be considered for the MSM due to your position as an Interim Director. You provided statements and images as evidence of your performance.

The Board, however, substantially concurred with the previous AO and Board's decision that your fitness reports are valid as written and filed, in accordance with the applicable Navy Performance and Evaluation System Manual (EVALMAN). In this regard, the Board determined your RS had the discretionary authority to assign performance trait marks, and was best situated to evaluate your performance and conduct during both reporting periods. The RS's decision not to assign any "5.0" performance traits is discretionary and not an error or injustice. Moreover, the EVALMAN does not require an RS to evaluate a service member based upon previous evaluations by other RSs since each reporting period is separate and distinct from other reporting periods.

Concerning your two-page statement and contention that you provided it to the RS. The Board is not an investigative body, the Board has not found any corroborating evidence of the purported two-page statement, and you did not provide it. Regarding the "NMRTC ██████████, ██████████" guidance, the Board determined the purported guidance is not a directive to award a MSM. The Board affirmed the previous Board's decision, according to SECNAVINST 1650.1J, a Personal Military Decoration (PMD) is a discretionary honor, there is no entitlement to a PMD, and your command's decision not to award you with a PMD is not an error or injustice.

You also indicate in your application that you are the victim of discrimination and retaliation. The Board, however, determined there is insufficient evidence to conclude that your demotion from Deputy Comptroller was discrimination and retaliatory in violation of OPNAVINST 5354.1H. In making this determination, the Board noted that you were the subject of three investigations as Deputy Comptroller during April 2021; investigations that involved the signing of a commitment for funds with an unauthorized agency. Therefore, the Board determined there is insufficient evidence of discrimination and retaliation. The Board thus 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 thus 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,

7/30/2024

