



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

██████████
Docket No. 7403-24
Ref: Signature Date

██████████
██████████
██████████

██████████,

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 3 December 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 10 October 2024 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-803), and your 25 November 2024 response.

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 promotion to Chief Warrant Officer 2 (CWO2) with a date of rank of 1 April 2017 including all backpay, and if approved, a corrected Certificate of Release or Discharge from Active Duty (DD Form 214). Alternatively, you requested promotion to Senior Chief Petty Officer (E-8) with a frocking date of 1 June 2016 and a date of rank of 1 June 2017, including all backpay, and if approved, a corrected DD Form 214. The Board considered your claim that after results of your selection to CWO2 were released, you were called an “anchor chucker” and received a negative SELECTED Evaluation and Counseling Record (Eval). You further claim that your commander disregarded NAVADMIN 044/16 and canceled your orders to attend Limited Duty Officer (LDO)/CWO School. You claim that the negative Eval for the period ending 15 September 2016, ruined the rest of your career and that you were passed for promotion to E-8 seven times. The Board considered your

contention that you should have retired as an E-8 or E-9 but that you were forced to retire as an E-7 due to High Year Tenure after serving in the Navy for 24 years, and had you been allowed to commission, “who knows” how far your career could have gone. The Board noted in February 2016, you were selected by the FY-17 Active Duty CWO In-Service Procurement (ISP) Board for designator 7151 with a commissioning date of 1 April 2017.

You claim that you did not receive NJP in accordance with JAGINST 5800.7G or the Manual for Courts-Martial, and there is no Disposition of Offense Form (NAVPERS 1626/7) in your official military personnel file. You further claim that had you received nonjudicial punishment (NJP) then your security clearance would have been revoked and you would have been forced to retire in 2018, but you maintained your clearance, received all good conduct medals you were eligible for, and reenlisted for four years in 2018. However, the Board noted there is a 6 December 2016 Report of NJP in your official military personnel file, which documents your 5 August of 2016 NJP for violating Article 92 of the Uniform Code of Military Justice (UCMJ). Specifically for failure to adhere to Special Operations Command South (SOCSOUTH) policy, failure to notify the command of a visitor in the operational area, and dereliction of duty involving alcohol consumption by a subordinate while participating in exercises. The Board noted in the Report of NJP you admitted to violating specifications one and two of the charges, but denied that you committed specification three, further indicating that you were aware of the NJP. Subsequently, on 5 August 2016 you received a Punitive Letter of Reprimand and on 16 February 2017, the Commander, Naval Special Warfare Group TWO removed your recommendation for appointment to CWO due to your violation of Article 92 of the UCMJ.

The Board carefully and conscientiously reviewed your claims of an error or injustice, including all of the material that you provided in support, and it disagreed with your rationale for relief. The Board determined there is sufficient evidence that you received NJP on 5 August 2016 for violating Article 92, UCMJ. The Board noted that you acknowledged your Article 31, UCMJ Rights, you agreed and accepted NJP subject to appeal, you did not submit written matters for consideration, and you exercised your right to appeal. The Board also determined that when making the decision to impose NJP, the commander relied on a preponderance of evidence that substantiated the allegations of misconduct when determining that your NJP was warranted. The Board thus determined your commander acted within his discretionary authority and imposed NJP.

The Board substantially concurred with the AO and determined your request for appointment to CWO is without merit. In this regard, the Board noted the Commander, Naval Special Warfare Group TWO removed your appointment recommendation due to violating the UCMJ. Subsequently, on 28 March 2017, the Deputy Chief of Naval Operations (Manpower, Personnel, Training, and Education) removed your name from the FY-17 Active Duty CWO ISP Selection Board List. The Board determined the Deputy Chief of Naval Operations acted within his discretionary authority upon consideration of all available evidence when determining you should be removed from the FY-17 AD CWO ISP Selection Board List.

Alternatively, you requested backdate of promotion to E-8. However, the Board noted that due to your request and approval for voluntary retirement you were removed from the FY-18 E-8 eligible board. Subsequently, you cancelled your retirement request, and the Board noted you were properly considered but not selected by the FY-19 through FY-23 E-8 eligible board for

review. The Board thus determined that you were properly considered, but not selected for promotion to E-8, and therefore not eligible for the requested relief.

Regarding your claims that the negative Eval ruined the rest of your career and was written in retribution for being selected [to CWO], the Board noted other than your statement, you provided insufficient evidence to support this claim, and the Board determined the Eval to be valid. The Board noted the contested Eval documented your relief from deployment due to loss of confidence and included a "Promotable" recommendation. The Board further noted that the Performance Evaluation Manual allows the reporting senior (RS) to comment on poor performance or misconduct whenever the facts are clearly established to the RS's satisfaction. The Board also noted that you acknowledged the Eval and indicated "I do not intend to submit a statement." The Board further determined that your decision to not make a statement indicates that you understood the basis for the fitness report.

Lastly, the Board considered your claims that the NJP has disproportionately impacted your career, including your non-selection for promotion. The Board concluded you provided insufficient evidence that removal of the NJP to improve your promotion opportunities is not warranted. Moreover, the Board is not an investigative agency and 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 carefully considered the totality of the evidence and found that you did not meet the burden of proof to overcome the presumption of regularity attached to the official actions of Navy Officials. Thus, the Board concluded there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

The Board also noted you checked the "PTSD," "Other Mental Health," "Sexual Assault / Harassment," "and "Reprisal/Whistleblower" boxes on your application, however the Board determined you provided insufficient evidence that any of these issues/conditions were related to your request.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. Title 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 Department of Defense 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 Title 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 Board for Correction of Naval Records 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 this Board, therefore please also include previously presented documentation that supports your statements.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

1/14/2025

