



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. 7563-24
Ref: Signature Date

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Dear Petitioner:

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 that 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 1 October 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, to include the additional material submitted on 27 September 2024, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board carefully considered your request to reinstate your selection for advancement to Chief Petty Officer (CPO/E-7). Additionally, the Board considered your request for the removal of the following adverse materials from your Official Military Personnel File (OMPF): (1) NAVPERS 1626/7, the Report and Disposition of Offenses documenting your nonjudicial punishment (NJP) dated █; (2) Evaluation Report and Counseling Record (Eval) for the reporting period █; and (3) Detachment for Cause (DFC) dated █, along with any related documents in your OMPF. The Board considered your claims that your rights were violated during the NJP process, particularly by the command's decision to limit your preparation time and by denying you the opportunity to submit additional statements in your defense at NJP or during the appeal. You also contend that the NJP appeal process failed to adequately address these concerns regarding fairness. The Board considered your assertion that the Preliminary Inquiry (PI) was fundamentally flawed, citing issues with its factual, procedural, and legal aspects. Specifically, you claim the investigating officer (IO) did not adhere to Article 31(b) of the Uniform Code of Military Justice (UCMJ) by failing to inform you of the suspected offenses before you made a statement. You further argue that the IO reached unsupported conclusions, inaccurately stating that you "admitted" to clearing chat logs.

Additionally, you claimed that the IO neglected to interview sailors in the operations department who had relevant information, instead focusing on those identified by the main accuser. The Board also considered your assertion that the Commanding Officer (CO) lacked sufficient evidence to support claims that you “intimidated” or “bullied” junior sailors, as well as your argument that the CO abused his discretion in finding you guilty of abandoning the Ships Signals Exploitation Equipment (SESS) watch. Finally, the Board considered your claim that the [REDACTED] e-mail between you and a former sailor of your previous command shows that the main accuser fabricated the allegations against you to cover up his own misconduct.

The Board noted that on [REDACTED], you received NJP for violation of the UCMJ, Article 92 for failure to obey an order or regulation (3 specifications), and Article 131b for obstructing justice. As punishment, you received an oral admonition. On [REDACTED], you submitted an appeal of NJP to the [REDACTED]. In your appeal, you claim the punishment imposed was unjust and disproportionate to the offense. You further claim, that you were not guilty of the offenses charged and there was insufficient evidence to overcome the presumption of innocence. On [REDACTED], the [REDACTED], [REDACTED] considered your appeal addressing all of your concerns and granted part of your appeal by dismissing the Article 131b charge, indicating that direct evidence of your attempt to influence proceedings was not apparent from your record. However, he further determined that your CO did not abuse his discretion in the factual findings or in the punishment awarded and that the punishment awarded was well within reason on the basis of your violation of Article 92 alone and concluded that the NJP findings of guilt on Article 92 and punishment would be upheld as just and proportionate.

On [REDACTED], the CO issued you an Administrative Remarks (Page 13) counseling, notifying you that your advancement to E-7 was being withdrawn due to substantiated misconduct. You also received a special Eval documenting your NJP and withdrawal of the recommendation for advancement to E-7, after your NJP was upheld by [REDACTED]. Additionally, the Board noted on [REDACTED], the CO recommended your DFC by reason of misconduct.

In regard to your contention that the punishment imposed was unjust and disproportionate to the charged offense and that there was insufficient evidence presented to overcome the presumption of innocence, the Board determined your claims to be without merit. The Board noted the CO acting within his discretionary authority determined a verbal admonition to be suitable, considering all of the available evidence, your past performance, character statements, and your otherwise “clean” disciplinary record in the Navy. The Board noted other that your statement, you provided insufficient evidence of your claims and determined the punishment imposed to be reasonable and within policy standards.

The Board considered your claim that the NJP appeal process failed to adequately address the deprivation of your rights to fairness, including your claims that your command restricted your preparation time and denied you the ability to provide additional statements in your defense. However, the Board noted the CO responded to your appeal, indicating that while the references do not specify a timeline, your counsel’s implication of insufficient time to examine evidence is noteworthy given that one of the offenses charged involved obstructing justice by accessing

investigatory materials prior to the NJP. Additionally, the Board noted that you verbally acknowledged having the opportunity to examine the documents used as evidence against you during both the Executive Officer's Inquiry (XOI) and NJP, a statement the CO memorialized in writing.

The Board also considered your claim that the PI was fundamentally flawed in various respects, including factual, procedural, and legal issues. You assert that the IO failed to comply with Article 31(b) by not informing you of the offenses you were suspected of before you made a statement, the IO reached unsupported conclusions, and incorrectly stated that you "admitted" to clearing chat logs—an assertion you argue lacks any actual admission in the PI. You also contend that the IO neglected to interview relevant sailors in the operations department, focusing instead on individuals identified by the main accuser, rendering the PI legally insufficient. However, the Board noted the CO addressed these points in his response to your appeal, noting that, as is common in investigations, the facts and circumstances that emerged during the process led to a broader inquiry, which prompted the re-reading of your rights under Article 31b, which you acknowledged in writing. After being properly advised of your rights, the Board noted you pleaded guilty to one specification of the first charge, effectively admitting to misconduct. The Board noted, too, that following the IO's initial findings in July, the CO requested additional information that resulted in a more comprehensive version of the investigation finalized in early August. The Board noted that the CO deemed it necessary to extend the investigation to gather specific witness statements, thereby ensuring a thorough and well-rounded examination of the facts. The Board noted the expansion was justified, as it aimed to include evidence both implicating and exculpatory of your alleged misconduct.

The Board considered your claims that the IO failed to comply with your rights under Article 31(b) of the UCMJ; however, the Board noted although Article 31(b), UCMJ requires servicemembers to be informed of their rights, it has limited applicability to administrative actions and does not prevent the command from using statements not compliant with this Article for administrative determinations. Moreover, servicemembers are entitled to appeal NJP if they believe it to be unfair or inequitable, in which your case, you did. The Board further noted that the CO also granted you extensions to file your appeal and your appeal was review by the General Court Martial Convening Authority (GCMCA), after which it was determined the NJP findings and resulting punishment were just and proportionate. The Board thus determined the NJP is valid and concluded that you were properly advised of your rights at NJP and chose to waive your right to remain silent by entering a plea, and that the punishment imposed was not disproportionate or unjust.

With regard to your claim that there was insufficient evidence to prove that you "intimidated" or "bullied" your junior sailors. The Board noted the CO determined that your actions contributed to an atmosphere of bullying and intimidation, resulting in a loss of trust and confidence. The Board operates under a presumption of regularity regarding the official actions of public officers. In the absence of substantial evidence to the contrary, the Board will assume these officials have properly fulfilled their duties. In your case, the Board finds no basis to disregard the CO's assessment or the evidence supporting the conclusion that your conduct negatively impacted the command environment.

In regard to your request for reinstatement of your advancement to E-7, the Board noted pursuant with BUPER Instruction 1430.16, withdrawal of an advancement recommendation is the prerogative of the member's current CO and he or she may withdraw a recommendation for advancement at any time, prior to the advancement effective date, if the member is determined to no longer qualify for advancement. In your case, the Board determined your CO acted within his discretionary authority when determining that your advancement to E-7 should be withdrawn, and your evidence is not sufficient to overturn that decision.

In regard to your claim that you have not been in any trouble before or since the accusation was made in November 2021, the Board noted past or future performance does not invalidate the misconduct, which led to the CO's conclusion that a Page 13 counseling, adverse Eval, and withdrawal of advancement was warranted.

Finally, the Board is not an investigative body 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 they have properly discharged their duties. The Board there was sufficient evidence for your CO to substantiate your misconduct. Furthermore, the Board noted on 21 February 2024, the Office of the Naval Inspector General Senior Official Investigations Division reviewed your allegations against a Department of Navy senior official and determined your request did not warrant investigation because there was insufficient evidence to constitute a credible allegation of misconduct. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting changes to your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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 the submission of new matters, which will require that you 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,

11/5/2024

