



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

██████████
Docket No. 8349-24
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.

A three-member panel of the Board, sitting in executive session, considered your application on 6 May 2025. 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 11 September 2024 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32), 16 October 2024 AO furnished by the Navy Office of Legal Counsel (BUPERS-00J), 13 March 2025 AO furnished by a Licensed Clinical Psychologist (LCP) and Psychiatrist (MD), and your responses to the AOs.

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 evaluation reports for the reporting periods 16 September 2021 to 15 November 2021, 16 November 2021 to 15 May 2022, and 16 May 2022 to 1 August 2022 and to replace evaluations with corrected evaluation for the reporting period 16 September 2021 to 1 August 2022. You also request reinstatement of your Master Diver Navy Enlisted Classification (MMDV NEC). If a correction to your record is granted, you request a Fiscal Year (FY) 2023 and 2024 Special Selection Board (SSB) for promotion to Master Chief Petty Officer. The Board considered your statement and contentions that:

- (1) Reporting officials disregarded diagnosed medical issues that led to and caused perceived performance deficiencies.
- (2) Supervisors disregarded timely submission of pertinent documents, omitted exculpatory evidence and basic administrative documents and denied requests for appropriate redress.
- (3) You had numerous medical complications during your time as a diver. You suffered undocumented traumatic brain injuries (TBIs). In September 2020, you suffered from Lyme disease, which caused neurological issues. On 7 June 2021, you suffered an additional TBI during operational duties.
- (4) You performed as the master diver during the recovery of the ██████████. You were fully involved in all leadership decisions, personnel considerations, training, planning, systems preparation and maintenance, as required and expected of a master diver.
- (5) You became the object of unfair treatment by Command Master Chief ██████████ shortly after you checked onboard.
- (6) Nine days after you filed an Inspector General (IG) complaint against ██████████ for toxic leadership and abuse of authority, you were issued an adverse evaluation. Knowledge of the IG submission was known to ██████████ and the commanding officer (CO). The Command Master Diver falsified documents using your name.

To assist in reviewing your petition, the Board obtained and considered the aforementioned AOs. According to the PERS-32 AO, which was considered unfavorable to your request, your evaluation reports are valid. The Navy Performance Evaluation System Manual (EVALMAN) authorizes Reporting Seniors (RSs) to provide specific comments when they are a significant part of the member's duties and display particularly weak performance. PERS-32 determined that you provided no documentation that supports the case of probable injustice regarding the evaluation reports, and you have not shown that there is no rational support for the RS's action or that the RS acted for an illegal or improper purpose.

The BUPERS-00J AO, which was also considered unfavorable to your request, found that there is no evidence of procedural or substantive error with the Preliminary Inquiry. BUPERS-00J noted that an investigation is not needed for a RS to comment on substandard performance, and you did not provide adequate proof to contradict anything contained in the investigation. BUPERS-00J determined that the record reflects clear documentation identifying deficiencies which could reasonably impact the evaluations, and you failed to show by clear and convincing evidence that there was a material error rendering the issuance of the evaluations unjust. BUPERS-00J also determined that your petition provides evidentiary justification for the evaluations, thus supporting the CO's official actions, and specific evidence is seen through the Letter of Instruction (LOI). Additionally, you provided no evidence that the removal of the MMDV Classification was done in contradiction to policy, and the evidence does not support the fact that you were unfairly considered for promotion.

The LCP/MD AO, which was again considered unfavorable to your request, found that you had been diagnosed with TBI during military service and received treatment for the condition, with positive results. Based on totality of the evidence, the LCP/MD determined that it is difficult to attribute your negative performance rating and recommendation of removal of your diving classification to symptoms associated with TBI. The LCP/MD noted that you consistently denied engaging in any unprofessional or negative behavior that would warrant the evaluation, but you state that it was related to reprisal and personality conflict. Additionally, when repeatedly evaluated throughout your assessment and treatment of TBI, you were found fit for full duty and responsible for your actions. The LCP/MD concluded that there is in-service evidence of TBI that may be attributed to military service but insufficient evidence to attribute your misconduct to TBI.

In response to the PERS-32 AO, you contend that its lack of specificity undermines its credibility and presents arguments that obfuscate rather than clarify the lack of injustice. PERS-32's refusal to accept the unsigned replacement evaluation overlooks that its unsigned status is directly tied to the petition itself. You also contend that NEC removals must be factually based on documented evidence of specific failures in performance or violations of standards. You claim the CO's actions, including the contested evaluations and removal of your MMDV NEC, are unsupported and fail to meet the high standards outlined in Navy instructions and case law. In response to the LCP/MD AO, you argued that its conclusion that "there is insufficient evidence to attribute your misconduct to TBI" is both logically and legally untenable, utterly indefensible, and without analytical merit.

In reaching its decision, the Board observed, at the outset, that it 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. In its review of your request and all available evidence, the Board substantially concurred with the AOs provided by PERS-32, BUPERS-00J, and the LCP/MD. In this regard, the Board determined that your evaluation reports are valid as written and filed according to the applicable EVALMAN. The Board noted that your evaluation report ending 15 November 2021 is adverse and determined that the RS properly stated the required justification for each adverse performance trait. The Board determined that the RS's comments are supported by sufficient evidence that includes the LOI, Report of Enlisted Counseling, and Non-Punitive Letter of Caution (NPLOC). PERS-32 appropriately stated that the can only comment on the foundational elements of the report as it applies to the instruction, which they did. Accordingly, the Board also determined that the AO sufficiently addressed the validity and processing of your adverse evaluation report in accordance with the EVALMAN. The RS had the discretionary authority and was best situated to evaluate your performance and conduct. The Board found sufficient evidence that your chain of command provided sufficient counseling regarding your performance and properly documented their attempts to remediate your deficiencies.

Concerning your evaluation reports ending 15 May 2022 and 1 August 2022, the Board determined that your request for removal lacks merit. In this regard, the Board noted that your evaluation reports are not adverse, contain no adverse performance traits or comments, and the

promotion recommendation is “Promotable.” The evaluation of Sailor’s performance and conduct is the responsibility of the RS. According to the EVALMAN, “[the] contents of a FITREP, CHIEFEVAL, or EVAL are the responsibility of the reporting senior who signs it, and are not subject to review, change, comment, or endorsement by other persons within or outside the chain of command except as provided in this manual.” Therefore, no provisions exist in any regulation to allow a servicemember to submit a substitute evaluation report based on their own opinion of their performance without the signature of the RS. Accordingly, the Board concurred with the AO that the evaluation report you provided for the entire period cannot be accepted.

The Board also substantially concurred with BUPERS-00J that you provided no evidence that the removal of the MMDV Classification was done in contradiction to MILPERSMAN 1440-011. In reaching its decision, the Board noted that the CO, ██████████ submitted a NEC Change Request to remove your MMDV NEC. As justification, the CO noted that the request was “[d]ue to many observed and enduring failures in leadership, decision making and communication, I have lost all confidence that [Petitioner] can safely execute the duties of a Master Diver at ██████████. Furthermore, I do not believe he can safely function as a MDV anywhere within the United States Navy. . . It is my intention that his action be taken in order to remove the potential for future catastrophe, which I see as imminent.” In an administrative message dated 23 March 2022, BUPERS and the Navy Personnel Command (NAVPERSCOM) provided notification that your NEC conversion to “EM” via direct conversion in accordance with MILPERSMAN 1440-011 was approved. BUPERS and the NAVPERSCOM are authorized to direct forced conversion. Forced conversion is authorized when there is a loss of credibility that significantly diminishes or impairs the ability to perform duties in the current rating. The Board determined that your CO provided sufficient evidence to support a loss of credibility to perform as a MDV and submitted the request to change your NEC in accordance with policy. Moreover, the CO’s request was reviewed and approved by BUPERS and the NAVPERSCOM. The Board concluded that the revocation of your NEC was proper and was not persuaded that your NEC should be reinstated.

The Board also found insufficient evidence that your TBI and other medical issues led to and caused perceived performance deficiencies. In this regard, the Board substantially concurred with the AO furnished by the LCP/MD that there is insufficient evidence to attribute your misconduct to TBI. While a TBI can impact performance, medical documents indicate that your symptoms were more explainable by a combination of current stress, pain, and sleep disturbance rather than ongoing symptoms from your head injuries. Upon completion of treatment for Postconcussional syndrome, you were deemed fit for duty and world-wide assignable, responsible for your actions, and subject to the normal channels of counseling and discipline. The Board concluded that there is insufficient evidence to attribute your negative performance and removal of your NEC to symptoms associated with TBI.

The Board further determined your contention that reporting officials disregarded your medical diagnosis lacks merit. The Board noted that you were issued a LOI on 11 February 2021 regarding flaws in your leadership and directions for remediation to prevent future leadership failures. On 17 September 2021, you were issued a Record of Enlisted Counseling due to loss of confidence and trust by subordinates. On 22 November 2021, you were issued a Nonpunitive Letter of Caution (NPLOC) notifying you that your performance as Master Diver (MDV) has

failed to meet the standards in the remediation plan and your designation as MDV of ██████████ ██████████" was suspended. The Board noted that you submitted a statement in redress to the LOI, Record of Enlisted Counseling, and NPLOC on 1 December 2021, asserting, in part, that the documents contain misrepresentations, inaccuracies, and untruths. The Board found no evidence that your reporting officials were aware of your TBI or that TBI was a contributing or mitigating factor of your performance and conduct.

Finally, concerning your contention regarding supervisors' disregard for the timely submission of pertinent documents, omission of exculpatory evidence, and denial of requests for appropriate redress, the Board determined that your contentions lack merit. In this regard, the Board noted that you submitted a statement in redress to the LOI, Report of Enlisted Counseling, and NPLOC. The Board also noted that the CO, ██████████, responded to your request for redress and concluded that the evaluation of your performance, along with numerous counseling sessions outside of the performance evaluation process, have been consistent and have been a true and accurate reflection of your performance. You also submitted an Article 1150 Complaint of Wrongs, the CO, ██████████ the appropriate chain of command responded to your complaint, noting that the contested documents were submitted to PERS-32 for inclusion in your official record, and the matter was closed. The Board determined that evidence supports the fact that your request for redress was adequately addressed by your CO and your Article 1150 was appropriately resolved and closed.

In conclusion, as set forth above, the Board found your evidence insufficient to overcome the presumption of regularity. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting corrective action or the convening of an SSB. 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. You claim that nine days after you filed an Inspector General (IG) complaint against Command Master Chief ██████████ ██████████ for toxic leadership and abuse of authority, the adverse evaluation was given. You also claim that knowledge of the IG submission was known to ██████████ and the CO. The Board, however, determined there was insufficient evidence to conclude that your adverse evaluation report was issued as reprisal in violation of 10 U.S.C Section 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,

5/29/2025

