



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

██████████
Docket No. 8350-24
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 the evidence submitted was 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 3 September 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.

The Board carefully considered your request to remove the NAVPERS Form 601-6, Court Memorandum, which documents your 23 May 1968 Non-judicial punishment (NJP). The Board considered your personal statement that you were refused the right to legal counsel. The Board also considered your claim that the reason you were considered Absent Without Leave (AWOL) is because you were drugged. You explain that you went to lunch, started to get dizzy, and were invited to rest at a hotel where you passed out and eventually found your way back to ship because someone helped you. Next you add that you told an officer were unable to stand watch because you were sick, and asked three times for someone to replace you but were told to stand watch anyways. Next, the Board considered your claim that you given the number for an attorney by your brother but two days before Captain's Mast but you were told that he would not represent you. You then explain that this was a set up and further claim that at mast, you were told by someone that, "If you go to Spain with us, we will forget all about this matter." In response, you claim that you told the officer you were homesick and were going home to get married; at which time you claim that the chief petty officer was ordered to strip you of your present rank to Seaman.

The Board noted that on 23 May 1968, your commanding officer (CO) imposed NJP on you for violation of Article 86, Unauthorized Absence for unauthorized absence from 1330 on 31 March 1968 until 2140 on 31 March 1968, and for violation of Article 113, Sleeping on Watch of Uniform Code of Military Justice (UCMJ). As punishment, you were awarded a reduction in rank to the next inferior paygrade (E-3) and forfeiture of \$96.15 for one month. On 10 June 1968, you were released from active duty with an Honorable discharged.

The Board noted, other than your personal statement, you presented insufficient evidence of your claims. The Board further determined that your NJP was conducted according to the *Manual for Courts-Martial* (1951 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined when making the decision to impose NJP, the CO would have relied on a preponderance of evidence that substantiated the allegations of misconduct. Thus, the Board determined that your Commanding Officer had sufficient evidence, acted within his discretionary authority, and conducted your NJP pursuant to the Manual for Courts-Martial.

The Board also noted you checked the "PTSD", "Other Mental Health," and "Reprisal/Whistleblower" boxes on your application; however, the Board determined you provided insufficient evidence that any of these issues/condition were related to your request. Moreover, the Board 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 found your evidence insufficient to overcome this presumption. 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 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.

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,

9/25/2024

