



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. 8911-24
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.

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 22 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, relevant portions of your naval record, and applicable statutes, regulations, and policies, as well as the as well as the 11 September 2024 Advisory Opinion (AO) provided by Navy Personnel Command (NPC) (PERS-80), the 16 September 2024 AO provided by NPC (PERS-32), and your response with additional attachments.

The Board carefully considered your request for the following relief: (1) Remove Fitness Report for the reporting period 1 May 2020 – 28 February 2021, (2) Direct Navy Personnel Command to convene a Special Selection Board (SSB) for promotion to O-6, and (3) allow for submission of the Meritorious Service Medal as an End of Tour Award for your contributions and service while you served as the Executive Officer (XO), █ during the aforementioned reporting period. The Board considered your claims that retaliatory actions by your former CO during the second and third reporting periods while serving as XO at █, in response to your Request for Redress, has severely impacted your career progression, undermined your professional accomplishments, unjustly marred your service record, hindered your promotion opportunities, and affected your personal well-being. The Board also considered your assertions that your CO, also the Reporting Senior (RS), intentionally manipulated your FITREP ratings and that the contested fitness report did not comply with BUPERINST 1610.10E (EVALMAN)

requirements, lacking both the Force Distribution and Summary Group Average. Next, the Board considered your contentions that the CO withheld your promotion recommendation for Captain, which you further claim, led to missed promotion opportunities. Specifically, you claim the Fiscal Year (FY) 2023 Captain Promotion Selection Board (PSB) was influenced by a close friend of the RS and that the RS was a Board member for FY24. In response to the AOs, you reemphasize your contentions and further assert the contested fitness report reflects retaliation from the RS and inaccurately portrays your performance. You also claim that you were misled by the RS regarding your eligibility for an End of Tour Award, which was unjustly withheld for review. Finally, you maintain that the RS actions constitute reprisal and have significantly harmed your career.

However, after thorough review of your request and the accompany evidence, the Board substantially concurred with the AO provided by PERS-32 that your record should remain unchanged. First, the Board noted the fitness report ending 28 February 2021 is valid. The Board noted the RS gave you non-adverse performance traits and non-adverse comments in block 41 of the fitness report. The Board further noted that you received a "Must Promote" promotion recommendation out of a summary group of three members. The Board noted, too, that pursuant with page 1-21 of the EVALMAN, for a summary group size of three, the RS is limited to 1 "Early Promote" recommendation. The Board noted the fitness report was not adverse and contained no adverse comments, performance traits, or promotion recommendation. Furthermore, the Board noted there was nothing that indicates the RS acted for illegal or improper purposes or that the fitness report lacked rational support.

Next, regarding your request for an SSB, the Board substantially concurred with the AO provided by PERS-80 and determined that you were properly considered and not selected for promotion by the Fiscal Year 2023, 2024, and 2025 [REDACTED] Promotion Selection Boards in accordance with the precepts and convening orders. In this regard, the Board concluded the processes used to reach the determination were lawful and in accordance with relevant policy. Moreover, the Board noted promotion to the rank of Captain is extremely competitive with more officers eligible than the board is authorized to select. Furthermore, the Board concluded since the fitness report was determined to be valid, therefore, pursuant with SECNAVINST 1402.1, a SSB is not warranted.

Next, in regard to your request for an EOT award, the Board determined your claims for an EOT to be without merit. In this regard, the Board noted pursuant with SECNAVINST 1650.1H, a recommendation for a personal award may be submitted by any commissioned officer senior, in grade or billet, to the individual being recommended, who has knowledge of any act, achievement, or service that may warrant such award. Further, a recommendation originated by other than the CO of the individual concerned must be forwarded to the CO for endorsement. Next, the Board noted an EOT award is not an integral part of the awards system, nor is one deemed automatic, and that any awards received must be submitted to the awarding authority who has jurisdiction over the individual at the time of act or service and must be properly endorsed by the chain of command. The Board determined that you provided insufficient evidence that any of these requirements were met or that an award was erroneously or unjustly withheld.

Finally, the Board considered your claims that you were the victim of reprisal. However, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. In this regard, the Board noted on 6 April 2020, you submitted a request for redress to your CO, and on 20 April 2020, the CO responded to your appeal, indicating that although there have been few times when communication has been challenged, you also did not recognize the multitude of conversations or communications that did occur since December of 2018. She further explained her intent to increase communications, issue the command a telework policy, and further outlined her expectations going forward regarding administrative matters and her expectations regarding your role during in person meetings. The Board noted, too, on or around 24 October 2021, you submitted a reprisal complaint to the Office of the Inspector General. On 2 December 2022, the Office of the Naval Inspector General (NAVINSGEN) completed their inquiry of your allegations of reprisal and determined the protected communication was not covered under Department of Defense Directive (DoDD) 7050.06 and that it did not warrant further inquiry. The Department of Defense Inspector General also conducted a thorough review of your complaint and concurred with the NAVINSGEN and recommended that the case be closed without further action. Thus, the Board agreed, and noted, other than your personal statement and your claims, there is nothing in your petition that indicates the RS acted for illegal or improper purposes.

Thus, the Board determined that you provided insufficient evidence to overcome the presumption of regularity and determined the CO acted within her discretionary authority when issuing you the contested fitness report. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting a correction to your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Since the Board determined you were not a victim of reprisal, 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 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,

11/24/2024

