



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. 9047-24
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 5 November 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 16 September 2024 advisory opinion (AO) furnished by the Navy Personnel Command (NPC) (PERS-32) and your response to the AO.

The Board carefully considered your request to modify the evaluation report for the reporting period 16 November 2022 to 28 June 2023 by removing block 41, "SEA DUTY/ASSIGNMENT IN RATE", your Individual Trait Average from blocks 40 and 50, and the block 43 closing statement "HIGHLY RECOMMENDED FOR RETENTION!" The Board considered your contention that you filed an Inspector General (IG) complaint alleging reprisal, however, the IG concluded no reprisal occurred. It was later discovered that a Navy Achievement Medal was processed, and some negative information was removed from your evaluation report. You also contend the evaluation report still contains wording and derogatory information as noted above. Further, the phrases do not match your performance and are code words to future E-7 selection boards that will severely affect your ability to be selected. Additionally, the evaluation report lacks a Chief Petty Officer promotion recommendation.

In response to the AO, you noted that your record was considered for promotion by the Fiscal Year 2025 E-7 promotion (PSB) selection board. You submitted information regarding your evaluation to the President of the PSB, but you were not selected. You opined that the evaluation may have significantly influenced the decision of the selection board, and you cannot conclude with confidence that the evaluation report was not intended to be an adverse evaluation.

The Board noted that you received a Regular/Detachment of Individual evaluation report ending 28 June 2023. In block 43 the Reporting Senior (RS) commented, "Member voluntarily stepped down as Leading Petty Officer" and your promotion recommendation is marked "Early Promote". The Board also noted that your RS submitted a Letter-Supplement increasing the block 39 performance trait from 3.0 to 4.0, and your Individual Trait Average from 3.57 to 3.71. The Letter-Supplement also removed the comment "Member voluntarily stepped down as Leading Petty Officer" and added the closing statement "****EXCEPTIONAL PROFESSIONAL COMMITTED TO THE STAFF AND MISSION!****"

The Board, however, substantially concurred with the AO and determined that your evaluation report is valid as written and filed according to the applicable Navy Performance Evaluation System Manual (EVALMAN). In this regard, the Board noted that your requested changes are administrative in nature and require a Letter-Supplement from your original RS. The Board determined that the fore mentioned Letter-Supplement sufficiently addressed the correction of your Individual Trait Average. The Board also determined that the remaining statements, "SEA DUTY/ASSIGNMENT IN RATE" and "HIGHLY RECOMMENDED FOR RETENTION!" are not derogatory, nor are they perceived as code words to future promotion boards. The Board further determined that the "Early Promote" recommendation is sufficient, not required by the EVALMAN, and the lack of a specific statement recommending you for promotion to Chief Petty Officer is not an error or injustice. Moreover, the Board found no evidence that your evaluation report was intended to be adverse. 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.

You also indicate in your application that you are the victim of reprisal. The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 U.S.C. Section 1034. Title 10 U.S.C. Section 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's (SECNAV) follow-on corrective or disciplinary actions an issue. Additionally, in accordance with Department of Defense policy you have the right to request a review of the SECNAV'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 SECNAV acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 U.S.C. Section 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, 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 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 Board, therefore please 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,

11/16/2024

