



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

██████████
Docket No. 9084-24
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 3 December 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, the 8 November 2024 Advisory Opinion (AO) provided by the Office of Legal Counsel (PERS-00J), as well as your response to the AO.

The Board determined that your personal appearance, with or without counsel, would 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.

Background Facts

The Board noted on 15 April 2022, the Commanding Officer, ██████████ convened a preliminary inquiry into allegations of improper conduct, comments, and climate within the Navigation Division. A preliminary inquiry report was completed on 26 April 2022, which concluded that your inappropriate behavior and inappropriate comments fostered an unprofessional working environment. Then, on 17 May 2022, you were identified as the alleged offender in a formal complaint of sexual harassment, for which a command investigation was conducted by Commander, ██████████. On 31 May 2022, ██████████ convened another command investigation into alleged retaliation and witness tampering onboard ██████████. On 7 June 2022, the command investigation into the sexual harassment allegation substantiated that you repeatedly sexually harassed and mistreated four subordinate

female Sailors from March 2021 through May 2022 onboard ██████████. Then, on 8 June 2022, a separate command investigation regarding allegations of retaliation and witness tampering concluded that you inappropriately contacted witnesses in connection with the sexual harassment investigation. As a result of the above investigations substantiating your misconduct, the Commanding Officer imposed NJP where you were found guilty of violating the Navy's harassment policy, engaging in cruelty and maltreatment toward subordinates, and obstructing justice. On 21 July 2022, you were notified that you were being recommended for detached for cause and issued a punitive letter of reprimand (PLOR), which noted that your misconduct occurred "from on or about March 2021 to May 2022. The Board noted that you acknowledged your Article 31, Uniform Code of Military Justice (UCMJ) Rights, you accepted NJP, you did not submit written matters for consideration, and you did not appeal your Commanding Officer's findings of guilt at NJP. The Board also determined that when making the decision to impose NJP, the Commanding Officer relied on a preponderance of evidence that substantiated the allegations of misconduct.

On 19 November 2022, you were notified that you were being processed for administrative separation by reason of misconduct, commission of a serious offense for failure to obey order or regulation (2 bases), cruelty and maltreatment, assault, and obstruction of justice. On 7 February 2023, the Administrative Separation Board (ASB) adjourned recommending by a vote of 3 to 0 that you be separated with a General characterization of service. The Board noted, too, the ASB certified that the records of the activities from prior enlistments, including court-martials convictions, unauthorized absences and commission of other offenses were not considered on the issue of characterization. On 14 May 2024, you were separated from the United States Navy for Misconduct, Serious Offense with a General (Under Honorable Conditions) characterization of service.

Requested Relief and Contentions

The Board carefully considered your request for "removal of the administrative separation from [your] military records" and "reinstatement into the military" and that you "be allowed to retire with 20 years of service, receiving an honorable discharge." The Board considered your contention that your separation was unlawful due to being processed under an incorrect basis as well as for your alleged misconduct during a prior enlistment. You assert that under MILPERSMAN 1910-142, such cases should be processed under MILPERSMAN 1910-402 for erroneous enlistment which, you claim typically results in an honorable discharge, as established in *Lowry v. United States*, No. 20-682C. The Board also considered your contentions that you were found not guilty of an assault allegation at nonjudicial punishment (NJP) but later found guilty of the same allegations at an ASB. The Board considered your assertion that your due process rights under the Fifth Amendment were violated, specifically, because you were not adequately informed of the allegations, and these discrepancies should be rectified to ensure fair treatment and preserve the integrity of military procedures.

In order to assist the Board in reaching a decision, it sought an Advisory Opinion (AO) from PERS 00J, the AO, dated 8 November 2024, was considered unfavorable to your request. You argued that the AO failed to adequately address significant procedural errors and material injustice. Specifically, you claim the AO mischaracterizes the charges against you by repeatedly

describing them as Sexual Harassment (SA), when the actual charge was harassment, thus distorting the factual record and this misrepresentation undermines the legitimacy of the proceedings and actions taken against you. You noted that observations from *Lowry v. United States* are directly applicable to your case and further claim the court's decision highlights that an erroneous enlistment should be processed under MILPERSMAN 1910-402, not 1910-142. You also contend that by failing to adhere to the correct administrative separation procedures, the Navy deprived you of your right to properly defend yourself against the allegations hindering your ability to mount a defense and denying you a fair hearing.

After careful consideration of your petition, the Board substantially concurred with the AO. In this regard, the Board found the investigating officers substantiated your wrongful conduct of sexual harassment and you were lawfully punished at NJP for these offenses, and you did not appeal the NJP. Furthermore, the Board noted you received proper notification of the basis for your separation pursuant to MILPERSMAN 1910-142, which included detailed descriptions of the alleged misconduct allowing adequate opportunity for defense and due process. The Board found the ASB determined by a preponderance of the evidence that you committed misconduct during your current enlistment which warranted your separation from the Navy. The ASB explicitly noted that adverse matters from your prior enlistment were *not* considered for characterization purposes pursuant to MILPERSMAN 1910-214, which states that adverse matters from a prior enlistment may be considered in determining separation but not in determining characterization of service. The Board found the ASB adhered to this policy, as evidenced by their findings and recommendations. The Board also considered your reliance on the *Lowry v. United States* case, however, the Board noted, unlike in *Lowry* where the Navy failed to provide notice for the reason for separation, you were properly notified of the charges and allegations against you.

The Board also considered the prior actions taken concerning your allegations, which included your Complaint of Wrongs under Article 1150, United States Navy Regulations. Specifically, the Board noted on 10 July 2023, the Commander, ██████████, then, a Rear Admiral, noted his previous denial of your requested relief, further indicating this was your third complaint in which you allege the same wrongs and the same redress previously requested on two previous occasions, arguably, the same complaints you are now requesting for this Board to reconsider in your case. The Board found, as previously considered and determined by the Commander, the ASB and separation authority appropriately considered all adverse matter from your prior and current enlistment including information which was unknown to your commanding officer at the time of your reenlistment, which included conduct you engaged in between your reenlistment date and May of 2022, including multiple investigations, NJP, and administrative actions which were determined to be consistent with applicable policies governing their decisions.

In regard to your claims that the AO mischaracterized the charges against you by equating harassment to SA, the Board determined your claim to be without merit. The Board noted the AO reference to SA is supported by documented findings in the command investigation. The Board noted the purpose of an ASB is to determine a service member's suitability to continue to serve on the basis of conduct and their ability to meet and maintain the required standards of performance and does not determine guilt or innocence. Moreover, the Board found the ASB

conclusions did not rely on charges of SA, but rather on substantiated violations of Articles 92, 128, and 131b of the UCMJ. The Board concluded you furnished insufficient evidence to warrant the requested relief and determined the Commander acted within his discretionary authority when imposing NJP and subsequently processing you for administrative separation. 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.

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,

1/23/2025

