



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

██████████
Docket No. 9267-24
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 4 March 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 13 November 2024 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (BUPERS 00J) and your response to the AO.

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 for payment of \$62,733.76. The Board considered your statement and contention that your promotion to lieutenant junior grade (LTJG/O-2) was delayed and your potential promotion to lieutenant (LT/O-3) was delayed as well because of a sexual assault investigation. You claim forensic evidence from the victim was tested, it was determined that there was male DNA evidence from multiple individuals, but none came from you. You also claim that after the ██████████ Police Department conducted an investigation, the District Attorney declined to prosecute. Additionally, the Naval Criminal Investigative Service (NCIS) did not support prosecution, the Navy Regional Legal Service Office (RLSO) recommended against court-martial charges, and the command concurred. According to SECNAVINST 1420.3, “[t]he appointment of an officer selected for promotion may not be delayed for more than six months after the date on which the officer would otherwise have been appointed, unless the SECNAV, or designee, specifies a further period of delay. . .” You assert

that even if all delays were properly granted, you should have been promoted to LTJG on 14 December 2022 because your case was never sent to a federal or state court, and no court-martial action was ever taken against you.

In rebuttal to the AO, you argue that the Assistant Secretary of the Navy (Manpower & Reserve Affairs)'s (ASN (M&RA)) abuse of discretion is supported by the sheer lack of substantive evidence against you. You claim that all of these issues were raised in your response to the report of misconduct, and ASN (M&RA) abused his discretion by failing to consider them. The evidence is, on its face, insufficient to meet the "preponderance of the evidence" standard of proof, especially with the absence of any corroborating evidence and DNA evidence, which indicates that you were not in any physical contact with the victim. The only piece of substantive evidence in the report of investigation is the summary review of the ██████████ Crime Lab report of DNA analysis, where they state that the sample was "uninterpretable." Additionally, you claim that you have not knowingly taken any controlled substance.

The Board, however, substantially concurred with the AO that your promotion was properly delayed in accordance with SECNAVINST 1412.6M, the instruction for the promotion of officers to the grade of LTJG in the Navy and first lieutenant in the Marine Corps. The SECNAVINST authorizes the Commander, Navy Personnel Command (CNPC) to withhold promotion when an ensign is found not qualified for promotion. When determining your qualification for promotion, your Commander and the CNPC would have considered adverse or reportable information, specifically, the investigation and pending criminal proceedings regarding the allegation of sexual assault in addition to your positive urinalysis test for Methylenedioxyamphetamine (MDA). Additionally, the Commander must consider whether disciplinary action should be brought against you. In your case, your Commander determined the investigation and severity of the charges warranted the withholding of your promotion. Your Commander subsequently determined that misconduct occurred, submitted a Report of Misconduct (ROM), and recommended administrative action. The Board determined that your Commander's decision to withhold your promotion was not an error or injustice. The Board also determined that your reliance upon SECNAVINST 1420.3 is misguided. Your promotion to LTJG was properly withheld, supported by sufficient evidence and you were processed for administrative separation according to SECNAVINST 1920.6D.

Concerning your contention that you should have been promoted on 14 December 2022 because your case was never sent to a federal or state court and no court-martial action was ever taken against you. According to MILPERSMAN 1611-010, "[t]here may be cases where an officer has allegedly committed misconduct or performed poorly, but there is no NJP, court-martial, or civilian conviction to adjudicate the allegations. Additionally, no punitive action has been made against the officer. In such circumstances, if the commander believes that the allegations warrant administrative processing, the commander may submit an ROM or an RSP requesting administrative separation." Pursuant to MILPERSMAN 1611-010, court martial or civilian court action is not required for the Commander to conclude that administrative processing is warranted. In accordance with policy, you were properly notified of the initiation of administrative separation proceedings. You acknowledged your rights and submitted a statement. The Commander and the Show Cause Authority considered your statement, and all matters related to your case and recommended your separation from naval service. Moreover, as the Separation Authority, ASN

(M&RA) approved the recommendation and directed your discharge. Concerning your assertion that ASN (M&RA) abused his discretionary authority, the Board found no evidence to support your contention, or that he failed to consider all of the evidence. Additionally, the decisions by the District Attorney and RLSO only affect the criminal prosecution of your case, not the administrative processing aspects. For criminal prosecutions to be successful, they must meet the beyond a reasonable doubt standard of proof. The standard of proof for administrative processing is much lower and only requires a preponderance of the evidence finding. The Board determined that your disagreement with the finding by ASN (M&RA) is not sufficient evidence of an error or injustice.

Concerning the purported DNA evidence, the Board found no evidence of the Report of Investigation or that none of the DNA came from you. Additionally, your rebuttal statement indicates that the DNA test was inconclusive. The Board, however, is not an investigative body. As the fact finders in your case, the Commander, Show Cause Authority, and Separation Authority acted within their discretionary authority. They also relied upon a preponderance of evidence that would have included the entirety of the report of investigation, your statement, the positive urinalysis, and all related matters when finding you unqualified for promotion to LTJG and that your conduct warranted separation from naval service.

Moreover, the Board 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. The Board found your evidence insufficient to overcome this presumption. The Board 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,

3/14/2025

