



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

█
Docket No. 9390-24
Ref: Signature Date

█
█
█
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 24 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 modify the 13 December 2023 fitness report memorandum (memorandum for the fitness report). You also request a Fiscal Year (FY) 2025 Special Selection Board (SSB) for promotion to Commander (CDR/O-5). If approved for a SSB, you request to include the replaced memorandum for the fitness report and supplemental information provided by you. The Board considered your statement and contention that the memorandum for the fitness report was materially flawed because it failed to comply with the Board's direction to explain the absence of fitness reports due to your gap in service while involuntarily separated. You assert that a modification to the memorandum for the fitness report is necessary to make your record complete, accurate, and free of material omission or injustice to be fairly considered by any future board without possible misinterpretation.

The Board noted that you were issued a fitness report for the reporting period 24 May 2019 to 31 October 2019 that was below the summary group average. You submitted a statement; however, your command failed to forward the statement in a timely manner, the statement was rejected for failure to comply with standards, and the statement was not included in your record until after the convening of the FY 2022 Active Duty Navy Commander promotion selection board (PSB) and FY 2021 Lieutenant Commander (LCDR/O-4) Continuation Selection Board

(CSB). Because you were not selected by either the PSB or CSB, and you twice failed selection for promotion to CDR, you were released from active duty. You petitioned the Board for removal of the aforementioned fitness report, removal of your FY 2022 failure of selection (FOS), and a CSB. The Assistant General Counsel (AGC) for the Secretary of the Navy granted you partial relief by approving a SSB for the FY 2022 CDR PSB and FY 2021 LCDR CSB. The AGC denied your request to remove your fitness report and directed the Navy to remove any record reflecting your appointment and promotion to CDR in the Navy Reserve, as well as any reference to your previous FOS for continuation and discharge and include the appropriate continuity memorandum to explain the gap in service.

PERS-32 issued a memorandum for the fitness report period 1 January 2021 thru 18 August 2023 stating:

This memorandum is being filed in lieu of fitness reports for the above period. By direction of the Secretary of the Navy, fitness reports are not available for inclusion in member's Official Military Personnel File and no speculation or inferences as to the nature or contents of such reports may be made by Selection boards or other reviewing authorities.

The Board determined that the PERS-32 memorandum for the fitness report sufficiently explained your gap in service. In this regard, the Board noted that the statement in the memorandum for the fitness report is standard for all cases, which require a memorandum for the fitness report for continuity. Because the statement is standard, there is no evidence of an injustice. Moreover, because of the unique nature of each member's fitness report gap, the Board determined that it would cause an undue administrative burden on the Navy to explain the circumstances of each member's case. If a member desire for a promotion board to know the specifics of their case, the Board noted that MILPERSMAN 1420-010 provides that "each officer eligible for consideration for promotion by a selection board may communicate in writing with the board in a letter to the board (LTB), addressed to the board president." According to your statement, you availed yourself of this opportunity when you were considered for promotion by the FY 2025 Commander PSB and not selected. Specifically, "SM did include such supplemental information in his permitted letter to the President of the CDR PBS, so that the CDR PSB could review SM's situation in its totality." The Board determined that the Navy complied with AGC's decision document and a modification to the memorandum for the fitness report is unwarranted. Moreover, the Board noted that a record of the Board proceeding/AGC decision is filed in your OMPF and was available for consideration by the FY 2025 CDR PSB. 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.

Concerning your request for a SSB, the Board determined that you have not exhausted your administrative remedies with the Navy. Specifically, you have not submitted a request to the Navy Personnel Command (PERS-8) to determine if a SSB is warranted according to SECNAVINST 1402.1.

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,

10/11/2024

