



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

Docket No. 10184-24
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.

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 25 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. In addition, the Board considered the 24 January 2025 advisory opinion (AO) furnished by the Office of the Judge Advocate General, Criminal Law Division (Code 20). Although you were afforded an opportunity to submit a response to the AO, you chose not to do so.

The Board carefully considered your request to remove all documents resulting from your 13 September 2019 nonjudicial punishment (NJP) and their effects. The Board considered your statement and contention that you were denied the right to decline NJP under the vessel exclusion. Precedent would indicate that the vessel exclusion should not apply due to the totality of circumstances: (1) the [REDACTED] was not underway and was unable to get underway due to emergent repairs, (2) You were not taken to NJP by your Commanding Officer (CO), but rather the Commander [REDACTED], who was not assigned to, embarked in, or onboard the [REDACTED], and (3) NJP was not conducted onboard a vessel but in the [REDACTED] office building. You also contend the Report of NJP does not contain a copy of the investigation in accordance with MILPERSMAN 1611-010. You further contend the investigation contained no evidence that supported "Knowing and Willful" misconduct. You claim your written statement was omitted from the Report and Disposition of Offenses and the request for Detachment for Cause (DFC) was for

misconduct; however, “N00/230 para (8)” indicates request was due to subsequent factors that are not germane to NJP/misconduct. You also claim the Punitive Letter of Reprimand (PLOR) does not satisfy the Manual of the Judge Advocate General (JAGMAN) requirements, the language is inappropriate to the offenses implying out of uniform misconduct and contains a factual error “(incorrect date in the narrative (14MAY19) a date which was prior to your alleged offenses).” As evidence, you provided correspondence from the former CO of the [REDACTED].

The Board, however, substantially concurred with the AO that the [REDACTED] properly applied the vessel exception and had the authority to impose NJP. In this regard, the Board noted that you received NJP for violating Article 92, Uniform Code of Military Justice (UCMJ) for dereliction of duty. The Board also noted that you were properly notified, you acknowledged your Article 31, UCMJ Rights, and you were afforded the opportunity to consult with a military lawyer. In your appeal, you argued that the awarded punishment was unjust, disproportionate, and predetermined. The Commander, [REDACTED], however, denied your appeal noting that you violated and failed to adhere to applicable policies, and found that the awarded punishment was well below the maximum punishment. The Board determined that the [REDACTED] acted within his discretionary authority and conducted your NJP according to the applicable Manual for Courts Martial (MCM). As the [REDACTED], the commander was in the direct administrative chain of command of the JPJ. Additionally, at the time of your NJP, the [REDACTED] was a component/subordinate unit of [REDACTED]. According to the MCM, any CO may impose NJP upon officers in his command. Superior operational or administrative commanders may exercise nonjudicial punishment authority upon any subordinate member in their chain-of-command, and “all members of units responsible to the superior commander are considered of the command. The Board considered the correspondence from the former [REDACTED] CO; however, the Board was not persuaded. Although the [REDACTED] CO elected not to impose NJP, the [REDACTED] had the authority to disagree and to exercise independent judgment based on his discretionary authority. The Board further determined that it is not a material error for one commander to view an offense as appropriate for disposition under NJP and for another commander to view it differently.

Concerning your arguments regarding the application of the vessel exception, the Board substantially concurred with the AO that the vessel exception was properly applied in your case. In this regard, the Board noted that the vessel exception is based upon the member’s relationship to the vessel and not the individual imposing NJP. According to the MCM, “[A] person is ‘attached to’ or ‘embarked in’ a vessel if, at the time the nonjudicial punishment is imposed, that person is assigned or attached to the vessel” The MCM makes no reference to whether the individual imposing NJP must also be attached to, or embarked in, the same vessel. The Board also determined that factors establishing whether the vessel exception applies were satisfied. Specifically, (1) you were “attached to or embarked in a vessel, the [REDACTED] and (2) the [REDACTED] was an operational vessel capable of being used as a means of transportation over water and to carry out missions. The Board noted that the [REDACTED] was undergoing shipyard repairs to the fuel oil storage tanks; however, the [REDACTED] maintained ship operations in port area and continued to conduct underway movements. The Board found no evidence that the [REDACTED] was not otherwise operational. Moreover, the correspondence from the former [REDACTED] CO confirms that, “[at] the time of NJP, [REDACTED]

was in an operational status” and “[██████████] was in an operation status at the time in question as it pertains to JAGMAN Article 15, vessel exception.”

Concerning your argument regarding the physical location of the NJP, the Board determined that this argument also lacks merit. The Board substantially concurred with the AO that the location of the NJP had no bearing on the vessel exception and its application to your status. In this regard, the Board noted that military and federal courts have rejected such rigid interpretations of vessel exception language. Regarding your relationship to the ██████████, the Board noted that you continued performing duties aboard ship as the Chief Engineer, you served your punishment aboard the ██████████, you only briefly went ashore, and the entire ship’s population remained working aboard the ██████████. Moreover, the Board found no evidence that you were detached from the vessel and were no longer part of the ██████████ or ████████████████████.

The Board also determined your contention regarding inclusion of the investigation in the Report of NJP lacks merit. The Board noted that MILPERSMAN 1611-010 provides that the Report of NJP “should” include a copy of the investigation and other documents that were considered at NJP. While not specifically noted as an enclosure, the Report of NJP does reference the command investigation. Moreover, the Board found no requirement to file the command investigation, other documents listed as enclosures, or references in the official military personnel file. The Board also determined that reference to the command investigation was sufficient and in accordance with policy. Additionally, according to the JAGMAN, the command investigation is retained by the command and can be made available via the Freedom of Information Act.

The Board determined your contention that the investigation contained no evidence to support “Knowing and Willful” misconduct lacks merit. The Board noted that the MCM does not require your dereliction to be “Knowing and Willful.” As the Chief Engineer of the ██████████, you had certain duties, you knew or reasonably should have known those duties, and the ████████████████████ found that, through neglect or culpable inefficiency, you were derelict in the performance of those duties. The Board found no evidence that the finding of facts or conduct of the command investigation were in error or not in compliance with the JAGMAN and you provided none.

The Board found no evidence that your written statement was omitted from the Report and Disposition of Offenses. The totality of your NJP package is retained by the command and there is no requirement to file your written statement in your official record.

Concerning the Report of NJP and DFC Request, the Board noted paragraph 8 and determined that the comments support the Commanders decision to follow through with the DFC and further support the findings that your performance as Chief Engineer did not meet expected standards of a “DDG Engineer Officer or that of a department head in the Surface Force.”

Concerning your contentions regarding the language and error in your PLOR, the Board determined that your PLOR is valid as written in accordance with the JAGMAN. The Board did note an error; specifically, the date “14 May 2019.” The Board, however, determined the date is a scrivener’s error and not material to the underlying facts. The Board concluded a correction to

the date would not change any of the facts related to the outcome of the NJP or disposition of your misconduct.

Finally, 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 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.

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,

4/21/2025

Executive Director

Signed by: