



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

██████████
Docket No. 10408-24
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 ██████████ advisory opinion (AO) furnished by the Navy Office of Legal Counsel (BUPERS 00J) and your response to the AO.

The Board carefully considered your request to reinstate your promotion to E-8 effective 30 June 24. Alternatively, you request to remove the evaluation report for the reporting period 16 September 2022 to 6 April 2023. The Board considered your acknowledgment that you received non-judicial punishment (NJP) on 28 March 2023 for violating Uniform Code of Military Justice (UCMJ) Article 107. You contend the paperwork to withdraw your advancement was never submitted to the Navy Personnel Command. As a result, your service record was screened during the ██████████ E-8 selection board, and you were selected for promotion. You also contend your command waited until the selection board results were posted to withdraw your promotion. Per BUPERINST 1430.16G, if a candidate loses their advancement recommendation before or during the selection board, the command must take proactive action to inform N321 and PERS 802. You claim this was not done, constituting a clear administrative oversight.

In rebuttal to the AO, you contend the command was unaware of the potential advancement withdrawal as a consequence of NJP. Since this consequence was not included in the NJP document, you assert that you were deprived of the opportunity to seek legal counsel or to make an informed decision regarding an appeal. You also argued that the punishment was

disproportionate due to lack of forewarning, there was a lack of due process, and you cited cases regarding collateral consequences before accepting NJP.

The Board, however, substantially concurred with the AO that the withdrawal of your advancement proper and in accordance with BUPERSINST 1430.16G. BUPERSINST 1430.16G authorizes Commanding Officers/Officers-In-Charge (COs/OICs) to withdraw a recommendation for advancement at any time, prior to the advancement effective date, if the member is determined to no longer qualify for advancement. Additionally, withdrawal of an advancement recommendation is the prerogative of the member's current CO/OIC. The Board noted the contested evaluation report documenting your NJP. The Board also noted that you acknowledged the report and indicated that you did not intent to submit a statement. The Board noted, too, that your OIC notified N321 and PERS-803 that he/she withdrew their advancement recommendation due to the Significant Problems evaluation and the OIC requested to invalidate your ██████████ selection. The Board determined there was no error in the removal of your OIC's advancement recommendation. Even if the OIC did not remove your advancement prior to or during the selection board, this did not constitute an error. In accordance with policy, your OIC was required to remove their recommendation for advancement prior to the effective date of your advancement, which he/she did.

Concerning your contested evaluation report, the Board determined that your evaluation report was written and issue according to the applicable Navy Performance Evaluation System Manual. The EVALMAN permits general commenting on misconduct whenever the facts are clearly established to the Reporting Senior's satisfaction. The RS is also authorized to comment concerning adverse actions against a member. In your case, the RS made comments regarding your NJP and substantiate the 1.0 performance trait mark.

Concerning your argument regarding the impact of NJP on your potential advancement, the Board determined that your argument lacks merit and found no evidence that you were not afforded due process in accordance with the Manual for Courts Martial. As a service member of your grade and experience, the Board opined that you would have been aware of the impact your misconduct and NJP could have had on your potential advancement to the next grade. Moreover, notification regarding all potential consequences of NJP is not required. Concerning the cases you cited, the Board determined that your reference to those cases is without merit, and you are not similarly situated as the individuals in those cases.

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 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, however, determined that there was insufficient evidence to conclude that the removal of your OICs advancement recommendation was submitted as reprisal in violation of 10 U.S.C Section 1034. In making this determination, the Board noted that you filed an Article 115 complaint of wrongs,

however, the Board found no evidence, other than your statement that the withdrawal of your OICs advancement recommendation was a reprisal action.

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

