



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

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Docket No. 10572-24
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 28 January 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.

The Board carefully considered your request to remove the 4 November 2023 Report and Disposition of Offense(s)/non-judicial punishment (NJP), 5 November 2023 Punitive Letter of Reprimand (PLOR), and fitness report for the reporting period 1 May 2023 to 30 April 2024. The Board considered your contentions that:

(1) The investigation misapplied the "reasonable person" standard. Rather than determining whether a reasonable person would perceive your actions as discriminatory in the context of the incident, the inquiry shifted to subjective interpretations of your intent. The Preliminary Investigation Officer (PIO) failed to investigate or conclude whether a reasonable person would have been offended by the use of the term "you people" or the word "they."

(2) Using the flawed investigation, the NJP process was also flawed, relying upon the same assumptions and lack of application of the "reasonable person" standard. It was an abuse of discretion to determine that a "reasonable person" would believe that you were harassing the Sailor's based upon their ethnicity by using the terms "you people" or "they".

(3) Your appeal of the NJP highlighted these deficiencies; yet the appellate authorities did not remedy the injustice. The focus on extraneous information and assumptions about your intent, rather than on the perception of the reasonable person, continued to influence the outcome.

(4) At the Board of Inquiry (BOI), the correct legal standards were finally applied. The BOI conducted a thorough review of the actual evidence, heard live testimony from several witnesses, and unanimously concluded that you had not committed misconduct.

The Board noted that you were issued a Letter of Instruction (LOI) by the Commanding Officer (CO) ██████████ on 13 June 2022. The LOI addressed allegations of racial discrimination during your tenure as Executive Officer, racial discrimination and bullying during your tenure as Combat Systems Officer, inappropriate comments, substandard judgment, and stereotypical biases against certain individuals. The Board also noted the preliminary inquiry (PI) into a complaint against you for National Origin related discrimination. The IO found the allegations of discrimination-national origin, as defined by OPNAVINST 5354.1H, were substantiated.

The Board determined that your NJP is valid in accordance with the Manual for Courts Martial (MCM) (2023 ed.). In this regard, the Board noted that you received NJP for violating Article 92 by wrongfully engaging in discriminatory harassment based on national origin. The Board also noted that you were advised of your Article 31, UCMJ Rights and due process rights. You appealed the NJP on the basis of injustice and denied saying the statements. You also argued that the NJP was based on a minor perceived infraction and the CO took advantage of his position to derail your career when you were just trying to do your job in upholding good order and discipline in the enforcement of ██████████ house rules. In response, the CO determined your behavior was not a minor perceived infraction and your actions constituted harassment based on national origin; as supported by a preponderance of the evidence. Commander, ██████████, after consideration of the evidence, your appeal, and the CO's endorsement, found the punishment imposed neither unjust nor disproportionate and denied your appeal. The Board also determined that your CO acted properly and within his discretionary authority when determining that you were guilty at NJP¹. Moreover, your CO relied upon a preponderance of evidence that included the PI and his firsthand knowledge of previous complaints related to your conduct. The Board further determined that you were afforded all due process rights, your appeal was properly considered, and it was denied by the appropriate authority. Thus, the Board determined your contention regarding a "reasonable person" standard was not persuasive. Based on a presumption of regularity, the Board concluded that the proper standard was applied in the processing of your NJP and its appellate review. The Board found your evidence insufficient to overcome the presumption of regularity in your case.

Concerning your BOI results, the Board noted that your BOI unanimously found that the reasons for separation were not supported by sufficient evidence to warrant your separation for cause. The Board determined, according to 10 USC Section 1182, BOI's are convened to receive evidence and make findings and recommendations as to whether an officer on active duty should be retained. Moreover, the scope of a BOI is not judicial but to form findings and recommendations

¹ Thus, the Board found that the PLOR was supported by the CO's finding and should remain in your record.

that provide a basis for separation for cause and for an officer to present matters favorable to their case on the issues of separation and characterization of service. The Board determined that the BOI's findings are not binding on your CO, who as the fact-finding body, had independent authority to determine whether you committed misconduct. As explained above, the Board found no error or injustice with his determination that you were guilty of misconduct.

Concerning your fitness report, the Board noted that you received a Periodic/Regular fitness report for the reporting period 1 May 2023 to 30 April 2024. The Board determined that your fitness report is valid as written and filed according to the Navy Performance Evaluation System Manual (EVALMAN). In this regard, the Board noted that the performance trait for section 34 is marked 1.0 and the Reporting Senior (RS) justification notes that you were awarded "CO's NJP on 4 November 2023 for UCMJ Article 92" and that proceedings concluded on 26 November 2023. The Board determined that the EVALMAN provides that general commenting on misconduct may be included whenever the facts are clearly established to the RS's satisfaction. The EVALMAN further allows the RS to provide comments concerning adverse actions against the member or actions suggesting persistent weaknesses. In your case, the RS properly commented on misconduct that supports the 1.0 performance trait and includes a comment regarding the conclusion of NJP proceedings.

Moreover, as indicated above, 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. Therefore, 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,

2/24/2025
