



Docket No. 10916-24
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 19 November 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.

Regarding your request for a personal appearance, 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 to restore your advancement to E-7 effective 16 August 2023, restore your time in rate to 29 September 2022, and back pay to the date of your original selection. You also request the removal of all related adverse material. The Board considered your contention that your selection was denied by the Chief of Naval Personnel (CHNAVPERS) without due process and constitutes a conflict of interest because the CHNAVPERS was the [REDACTED] for your ship and knew that you went to jail for a false report of domestic violence in 2019. You also claim that you did not receive non-judicial punishment, or court-martial, and you were not found guilty of domestic violence. You assert that you were denied selection with no evidence of being convicted of any crime.

The Board noted that during the Fiscal Year (FY) 2023 Chief Petty Officer (CPO/E-7) post-board review, it was revealed that you had adverse information present in your record.

Specifically, on 18 August 2019, you were arrested for strangulation, assault, and battery on a family member. According to the Deputy, Chief of Naval Personnel Action Memo, your case had enough evidence sufficient for a finding of guilty, but your case was deferred under terms that you complete the Batterer Intervention Program. You had a year to complete the program, or a warrant would be issued for your arrest.

According to BUPERSINST 1430.16G, the CHNAVPERS is the sole authority for the removal of enlisted personnel selected for advancement to E7 through E9 from a selection board list. The Board noted that, prior to making the decision to disapprove your advancement, the CHNAVPERS was aware of your claim that the complaint against you was false. The Board also noted that the CHNAVPERS reviewed and properly considered your personal statement, Commanding Officer's recommendation for promotion, Incident Determination Committee results, Commonwealth of ██████████ Court Order, and all relevant matters. Based on these factors, the Board determined that you were afforded the required due process. The Board noted you were afforded the opportunity to submit matters on your behalf and you availed yourself of that opportunity. Contrary to your claim, the Board found no evidence of a conflict of interest; specifically, there is no evidence that the CHNAVPERS had knowledge of your incarceration, or his purported knowledge of your incarceration prejudiced him in any way. The Board thus determined that the CHNAVPERS acted properly and within his discretionary authority when determining that you were not qualified and disapproved your advancement.

Further, the Board considered the statement by your spouse but was not persuaded. In this regard, the Board noted that all matters related to your case were adjudicated in civil court and there was sufficient evidence to find you guilty of domestic violence. The Board determined that your successful completion of the court ordered Batterer Intervention Program and Family Advocacy Program domestic violence treatment program formed the basis for the dismissal of charges. Moreover, it is immaterial whether the charges were dismissed by the civil court. The civil courts action does not change the character of the initial misconduct, which was supported by sufficient evidence. The Board further determined that NJP, court-martial, or civil conviction is not required for a determination regarding your qualification for promotion.

You also indicate "Other Mental Health" on your application. The Board, however, found no evidence of a mental health diagnosis or the nexus of your mental health to your misconduct. The Board also observed that you provided no evidence in support of your claim. 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 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.

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



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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,

12/17/2024

