



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

██████████
Docket No. 11268-24
Docket No. 11270-24
Ref: Signature Date

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Dear ██████████

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, as well as the 9 December 2024 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32). The AO was provided to you on 19 December 2024 and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your Report and Disposition of Offense(s) package (field code 73034625)/non-judicial punishment (NJP) and 1 February 2024 Court Memorandum. You also request to correct the evaluation report for the reporting period 16 November 2023 to 17 May 2024. The Board considered your contention that the field code entries were made without the appropriate document, as you elected to appeal. Your appeal was adjudicated on 17 May 2024, which suspended the reduction in rank. You claim the completed NJP form was not placed in the record and the suspension period has concluded. You also contend the NJP was documented on the contested evaluation report and should be corrected to maintain your current promotion recommendation. You claim the evaluation report removed your promotion recommendation after the NJP that resulted in your reduction in rate and appeal, which suspended the reduction.

The Board determined that your NJP is valid in accordance with the *Manual for Courts-Martial* (2024 ed.). In this regard, the Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 92, for wrongfully bullying a Sailor, Article 93 for cruelty and maltreatment, Article 115 for communicating threats, and Article 134 for using aggression and intimidation tactics in your leadership over subordinates. The Board also noted that you were advised of your Article 31, UCMJ Rights, and you accepted NJP. On 30 January 2024, you appealed your CO's punishment. On 17 May 2024, the Commander, Fleet Readiness Centers determined that the complete set aside of your punishment is not warranted, but partial relief is appropriate. The Commander considered the collateral effects of High Year Tenure on your reduction in rate and suspended the reduction for six months.

The Board noted the correspondence from the Officer-In-Charge (OIC), Fleet Readiness Center recommending corrections to your record. The OIC noted that your appeal would have postponed any permanent record entries from being made in your record and any documents submitted because of this error are requested to be removed. The Board, however, noted that your NJP package was filed in your official record on 26 June 2024 after your appeal. The Report and Disposition of Offense(s) properly indicates that your forfeitures were suspended for one month and your reduction to the next inferior pay grade was suspended for six months. Regarding your Court Memorandum, the Board noted that it was filed into your record on 9 February 2024 and does not include the suspension of your reduction. The Board determined that the error is harmless. Your rank was restored after the appeal, there is sufficient evidence in your record of the suspension, and there is no evidence that you are prejudiced by the presence of the court memorandum and exclusion of that detail in your record. The Board also determined that the court memorandum was filed in accordance with MILPERSMAN 1070-080, which provides guidance for the filing of adverse information and specifically includes the court memorandum.

Concerning your contested evaluation report, the Board noted that you received a Significant Problems/Regular evaluation report with three of your performance traits marked 1.0. In block 43, the Reporting Senior (RS) justified the traits and commented, "[m]ember was found guilty on 19 January 2024 for violation of UCMJ Article 92 – Failure to obey order or regulation . . . Member awarded reduction in rank to the next inferior paygrade (suspended) and forfeiture of 7 day's pay (suspended). Proceedings concluded on 17 May 2024." The Board substantially concurred with the AO and determined that your evaluation report is valid as written and filed according to the applicable Navy Performance Evaluation System Manual (EVALMAN). In this regard, general commenting on misconduct may be included whenever the facts are clearly established to the RS's satisfaction. The EVALMAN also allows the RS to provide comments concerning adverse actions against the member. In this case, your RS provided comments that substantiate the 1.0 performance traits, findings at NJP, properly indicated that the proceedings concluded on 17 May 2024, the date your appeal was adjudicated, and he did not recommend you for promotion. The Board also determined that the suspension of your reduction in rank did not excuse your misconduct or invalidate the CO's findings of guilt. Additionally, the expiration of the suspension period has no bearing on the RS's recommendation for promotion, and your fitness report is not a substitute for properly filed adverse documents.

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 also indicate in your application that Post Traumatic Stress Disorder (PTSD) is related to your request. The Board, however, determined there was no evidence of a PTSD diagnosis or its nexus to your misconduct.

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,

2/14/2025

