



**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. 424-25  
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 25 June 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 also considered the 29 January 2025 advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32), 27 February 2025 AO furnished by (PERS-803), and the 14 May 2025 Licensed Clinical Psychologist (LCP), and your response to the AOs.

The Board carefully considered your request to remove your evaluation report for the reporting period 15 November 2021 to 20 January 2022<sup>1</sup>. You also requested retroactive promotion to E-7, effective 14 April 2022, and retroactive pay and allowances at paygrade E-7, or an Enlisted Special Selection Board (SSB). In support of your request, you asserted the following:

(1) You were wrongly removed from the promotion list because you did not complete Chief's Season. You were diagnosed with adjustment disorder with mixed anxiety and depressed mood, which impaired your ability to finish Chief Season. This angered your chain of command who used an unsubstantiated act of misconduct as the basis to remove you from the

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<sup>1</sup> Petitioner's application originally requested to remove the evaluation report for the reporting period 21 January 2022 to 5 April 2022. Petitioner's detachment of individual report was not adverse nor related to the withdrawal of his advancement. In correspondence dated 19 May 2025, Petitioner's counsel clarified that the evaluation report in question is from November 2021 to January 2022.

promotion list. You received non-judicial punishment (NJP) for fraternization but the charges were dismissed.

(2) Your performance only decreased while suffering from an adjustment disorder. When your stressors were removed, you went back to being a great Sailor recommended to promote ahead of his peers.

(3) You referenced the Kurta and Wilke Memorandums regarding liberal consideration as a basis for relief.

(4) The chain of command could have withheld your promotion instead of withdrawing it. There is no other reason that the command gave you a one for leadership since you were found not guilty at NJP for fraternization. As punishment the command withdrew your promotion since there were no other administrative avenues to take.

To assist in reviewing your petition, the Board obtained the LCP AO. The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with an Adjustment Disorder in service. It appears his diagnosis was accurate as he noted specific stressors (Chief season) as contributing to his period of stress. An Adjustment Disorder is expected to resolve when stressors resolve and are different from other mental health conditions whereby the symptoms do not necessarily resolve when stressors resolve. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The LCP AO concluded, "it is my clinical opinion that there is sufficient evidence of an Adjustment Disorder that existed in service. There is insufficient evidence that his negative fitness report was in error."

In your response to the AO, you assert that the AO does not explain why the evidence is insufficient, did not mention that your symptoms resolved after being removed from the command, that there is no documentation or NJP to justify the evaluation removing your promotion, and the logical conclusion is your promotion was removed primarily due to a documented mental health condition. Additionally, you pointed out that PERS 803 recommended that the Board make the decision.

In its review of your request and all available evidence the Board determined that no relief is warranted and denied your petition. In reaching its decision, the Board observed that it is not an investigative body and 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.

In this regard, the Board noted that you joined ██████████ ██████████ in April 2021. On 5 October 2021 the Chief of Naval Operations announced the E-7 advancement selection board results; which included your name as being selected. You received

a Promotion/Frocking/Regular evaluation report for the reporting period 31 March 2021 to 14 November 2021 in which block 39 “Leadership” was marked 2.0.

In block 43 your CO commented, “[e]valuation submitted upon member’s selection to Chief Petty Officer.” “. . . was unable to complete the 2021 “Teaching to the Creed” CPO selectee syllabus.” “YN1 has all the attributes of a capable and effective leader. Continue to groom him!” The Board also noted that you acknowledged the evaluation report and indicated that you did not intend to submit a statement. You also received a Special/Regular Evaluation Report for the reporting period 15 November 2021 to 20 January 2022 in which block 39 for “Leadership” was marked 1.0. In block 43 your CO commented, “[e]valuation submitted to withdraw . . . recommendation for advancement.” “. . . has demonstrated the inability to effectively lead or perform at the Chief Petty Officer level.” Your promotion recommendation was marked “Significant Problems.” The Board noted too that your evaluation report indicates that you refused to sign the report. By refusing to acknowledge the evaluation report, you forfeited your right to submit a statement to the record. On 5 April 2022, you detached ██████████ and received a Detachment of Individual/Regular evaluation report documenting your transfer to “██████████ ██████████”. You acknowledged the evaluation report and indicated that you did not intend to submit a statement.

The Board determined that your contested evaluation report is valid as written and filed according to the Navy Performance Evaluation System Manual (EVALMAN) and Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve (BUPERSINST 1430.16G). BUPERSINST 1430.16G authorizes commanding officers (CO’s) 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. When withdrawing a recommendation for advancement, CO’s must prepare a Significant Problem evaluation. The Board determined that your CO acted within his discretionary authority and submitted your evaluation report in accordance with policy.

The Board found no merit in your contention that you were wrongly removed from the promotion list because you did not complete Chief Season. In this regard, the Board noted that your evaluation report ending 14 November 2021 was not adverse and the CO spoke favorably when commenting on your inability to complete the 2021 “Teaching to the Creed” Chief Petty Officer selectee syllabus or Chief Season. The CO commented that you possessed all the attributes of a capable and effective leader, and you should continue to be groomed for future leadership. The Board determined that your CO’s comments clearly demonstrate his support of your advancement to E-7 despite your inability to complete Chief Season. Although not specifically noted in your contested evaluation report, the Board opined that the misconduct you noted, which led to your NJP for fraternization, most likely contributed to your CO’s determination that you were no longer qualified for advancement. The withdrawal of advancement recommendation only requires that the CO determine the member is no longer qualified for advancement and submit the appropriate documents to NPC. The BUPERSINST 1430.16G does not require NJP or any other adverse action for a CO to deem you no longer qualified for advancement. The Board also determined your CO’s finding that you demonstrated the inability to effectively lead or perform at the Chief Petty Officer level was sufficient to warrant the withdrawal of your recommendation for advancement. The Board also determined

that your CO was best situated to evaluate your conduct and to determine if you remained qualified for advancement.

With respect to the mental health conditions that you raise, specifically an adjustment disorder, the Board substantially concurred with the findings of the LCP AO. In this regard, the Board acknowledged your diagnosis for adjustment disorder; however, the Board found no nexus between your mental health diagnosis and your adverse evaluation report. The Board agreed that additional records, as described in the AO, may aid in rendering an alternate opinion.

Regarding your reliance upon the Wilke and Kurta Memorandums, the Board determined that the Memorandums are not applicable in your case. The Wilkie and Kurta Memorandums are Department of Defense guidance documents that provide direction to Discharge Review Boards on how to consider requests for discharge characterization upgrades.

Regarding your request for an enlisted SSB, the Board substantially concurred with the PERS-803 AO that a SSB is not warranted. BUPERSINST 1430.16G authorizes convening of enlisted SSBs for individuals who were eligible but not properly considered through the normal selection board process. In your case, you were properly considered and selected. The Board thus determined that you are not eligible for a SSB and the withdrawal of your advancement recommendation does not meet the criteria for an enlisted SSB.

Based on the foregoing determinations, the Board determined there was no error in your November 2021 to January 2022 evaluation report as it appears to be valid as written and filed according to the applicable EVALMAN. The Board also determined that advancement to E-7 is not warranted. Moreover, your CO had no obligation to withhold your promotion nor is there any evidence that withholding your advancement would have resulted in a different outcome. In conclusion, the Board found the evidence you provided, in concert with its review of all available documentation, to be insufficient to overcome the presumption of regularity. 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 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,

7/15/2025

