



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 1017-25

Ref: Signature Date

[REDACTED]

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 26 November 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 8 September 2025 advisory opinion (AO) furnished by the Director, Criminal Law Division (Code 20) and your response to the AO.

The Board carefully considered your request to: (1) remove your nonjudicial punishment (NJP) and its derivatives, including but not limited to, the adverse evaluation report, and denied reenlistment, (2) correct your record to reflect selection and advancement to E-8 during the Fiscal Year (FY) 2016 advancement cycle, with a date of rank of 16 September 2015, (3) in the alternative, you request the Board direct a FY 2016 Special Selection Board (SSB) for E-8, a FY 2019 SSB for E-9, and (4) convene a FY 2016 SSB Limited Duty Officer/Chief Warrant Officer program board. You also request constructive service through the paygrade appropriate for High-Year-Tenure for E-8 with 26 years of service, and payment of all pay and allowances through 12 July 2027, including corrected High-3 computation, retirement eligibility, and full Thrift Saving Plan contributions.

The Board considered your statement and contentions that [REDACTED] v. *United States* is new evidence that should be considered in regard to your NJP and the vessel exception. The facts of your case

have strong similarities to the [REDACTED] case law. You argue that the considerations leading to the Board decision are all applicable to your case, except for one of the four points:

- (1) [REDACTED] was ordered away from the ship before the imposition of his NJP. You were ordered away from the ship a month before the imposition of your NJP.
- (2) [REDACTED] was assigned onshore duties after being ordered home. You were ordered to report to the [REDACTED] daily and perform onshore duties each day.
- (3) The [REDACTED] was completely non-operational during the entirety of [REDACTED] assignment to the ship. The [REDACTED] was operational, but it was deployed while you were assigned to [REDACTED].
- (4) Neither [REDACTED] regular place of work nor his NJP hearing took place aboard the ship. Neither your place of work nor your NJP hearing took place aboard the ship.

In its review of your request and all available evidence, the Board determined that no relief is warranted. The AO provided by Code 20 was considered and deemed unfavorable to your request. The AO concluded that [REDACTED] does not provide a basis for relief and your case should be reviewed by applying the law, rules and regulations in effect when you received NJP. The AO also concluded that there is nothing to apply retroactively as [REDACTED] is neither new law nor new evidence in your case. Additionally, 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 public officers have properly discharged their official duties.

In response to the AO, you argue that newly released guidance concerning the vessel exception, published after you initially tried to submit your petition in 2023, substantially enhances your rights. In November 2023, the Department of the Navy's Criminal Law Division issued a Code 20 Sidebar, entitled "Vessel Exception Policy Changes." While the entirety of the guidance does not appear to be publicly available, you argue it was published by the author of the AO and thus should be available for Board review. A publicly available report includes a "Flow Chart for Determining the Use of the Vessel Exception, as of November 2023" and was excerpted from this lengthier guidance. You also argue that there is substantial doubt that you would have received the same discharge if the 2023 guidance had been in place at the time of your discharge.

In this regard, the Board noted the following:

You were a Chief Petty Officer (CPO) onboard and assigned to the [REDACTED]. In November 2013, you allegedly sent inappropriate emails to a subordinate female Sailor. The subordinate female Sailor reported your behavior during a command investigation and though you maintained that subordinate Sailor initiated the conversation and the exchanges were consensual you were removed from the ship and assigned temporary duties with [REDACTED]. You received NJP, on 9 October 2014, for violating Article 92, Uniform Code of Military Justice (UCMJ). You also received an adverse evaluation report and

your request for reenlistment was denied. On 28 March 2015, you were discharged from the Navy with an Honorable characterization of service and RE-R1 reentry code.

Your initial petition (NR20170008595) was properly considered by the Board and denied; with the prior Board concluding that your petition lacked sufficient evidence to support your contentions. The Board determined that although you were temporarily assigned to [REDACTED], you were subject to the NJP authority of both commanders, therefore, your right to request a court-martial was not violated. When attached to or embarked aboard a vessel, the location of the NJP or a temporary duty assignment is not directly related to your right to request a court-martial. The Board thus determined that your actions violated the policy on sexual harassment. The Board also found that the Commander, [REDACTED], acted appropriately and in accordance with regulations. Accordingly, the prior Board concluded your adverse evaluation report was appropriately submitted and would remain in your record.

Your petition (NR20200003689) for reconsideration was also properly considered by the Board and denied; with the Board concluding that your petition lacked sufficient evidence to support your contentions. The Board found no material error or injustice in the use of NJP, issuance of an adverse performance evaluation, or in the denial of reenlistment. The Board concurred with the AO that your right to court-martial was not violated according to the Manual of the Judge Advocate General, SECNAVINST 5800.7. On the date of your NJP, you were attached to the [REDACTED]. The Board determined the location of the NJP, or temporary duty assignment is not directly related to your right to request a court-martial. See *St. Clair v Sec'y of Navy*. The Board found no error in the determination that you violated the Navy sexual harassment policy and concluded your adverse evaluation report was submitted according to regulations.

The Board affirmed its previous decisions and substantially concurred with the AO that no relief is warranted. In this regard, the Board determined that [REDACTED] does not provide a basis for relief and does not constitute new material. [REDACTED] v. *United States* is a 2017 Court of Federal Claims case that was published three years prior to your first petition and over seven years prior to your second petition. The Board also determined that you were not similarly situated as [REDACTED] to warrant relief. [REDACTED] was a sailor assigned to [REDACTED] which was non-operational while undergoing a complex overhaul and refueling. Accordingly, the Board found that Sharpe was *not* attached to a vessel as it applies to Article 15, UCMJ because the [REDACTED] was completely non-operational during the entirety of [REDACTED] assignment to the ship and, although he was assigned to the ship, he could not have been aboard or have gone to sea due to the extensive overhaul that was underway. Therefore, the [REDACTED] did not qualify as a vessel at the time of [REDACTED]'s NJP. In contrast, your permanent duty station was onboard the [REDACTED] [REDACTED]; a vessel that was deployed and operational within the meaning of Article 15, UCMJ.

Concerning your response to the AO, the current Board determined that the Code 20 training material does not provide a retroactive basis for relief. The Board noted that the Code 20 Sidebar is an informational newsletter based upon ALNAV 091/23 and intended for Navy and Marine Corps judge advocates. The flow chart is a visual and informational aid that does not have the effect of a lawful order or regulation. ALNAV 091/23 did not amend any text in Article 15,

UCMJ, and it would not have allowed you to avoid NJP had it been issued previously. ALNAV 091/23 clarified “the definition of when a vessel is operational” and provided “additional consultation opportunities for an accused prior to all NJP proceedings regardless of whether the vessel exception applies.”

Concerning your discharge and the balance of your request, the Board noted that your characterization of service was Honorable and your reentry code is favorable. In consideration of the totality of the evidence, the Board found no evidence that your reenlistment was denied solely because of your NJP and you provided none. The Board thus determined that your discharge was valid. Based upon the aforementioned determinations, the Board found no basis for the balance of your requests. In conclusion, the Board found your evidence insufficient to overcome the presumption of regularity and 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

12/15/2025

