



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 3086-25
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 (USC). 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 8 April 2026. 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 Advisory Opinion (AO) provided by Navy Personnel Command (NPC) (PERS 32) on 12 May 2025, the AO provided by NPC (PERS 80) on 3 July 2025, and your 8 August 2025 rebuttal to the AOs.

The Board noted you previously petitioned the Board requesting correction to your record by removing the fitness report for the reporting period 1 May 2020 to 28 February 2021, granting consideration by a Special Selection Board (SSB) for selection to Captain/O-6¹, and approval of your end of tour (EOT) Meritorious Service Medal. In your current request, you again request the same relief as well as a reprisal determination after “reevaluation of [your] case under the framework established by 10 U.S. Code § 1034.”

You contend the contested fitness report should be removed due to administrative errors identified by PERS-32; specifically, errors that “stem from reprisal following [your] Request for Redress” submitted to your Commanding Officer (CO)/Reporting Senior (RS) during your tour as ██████████ of Naval Reserve, Naval Supply Systems Command (NAVSUP), Fleet Logistics Center - ██████████. In detail, your statement, submission of new

¹ Based on the PERS-80 AO, you requested relief beginning with the Fiscal Year 2023 Promotion Selection Board, if your request for an SSB is approved.

matters, numerous “additional narrative for explanation” statements, your response to the Board dated 29 April 2025, and your rebuttal response to the AO dated 8 August 2025 discuss each of the following summarized contentions which, along with the in-depth discussion provided in your complete submission, were fully considered by the Board:

(1) The Board did not address the omission of a required forced distribution statement nor did the PERS-32 AO dated 16 September 2024 address it. When you sought clarification from PERS-32 after the Board’s 24 November 2024 denial, through direct communication via email and phone, PERS-32 confirmed that your contested detaching fitness report was procedurally invalid due to the omission of your required signature and the missing forced distribution statement. You specifically contend PERS-32 concluded that your detaching fitness report should have been rejected and not processed by PERS-32 when received in 2021. You further contend the following procedural violations discussed with PERS-32:

a. The report is adverse because the promotion recommendation on your prior fitness report by the same RS was an “Early Promote” (EP) and then was downgraded to a “Must Promote” (MP) on the follow on report with no justification due to forced distribution.

b. If the change in promotion recommendation was due to forced distribution, the absence of the required statement constitutes an administrative error, making the report invalid because it incorrectly appears adverse.

c. According to BUPERSINST 1610.10E, “a change in promotion recommendation caused by forced distribution is not considered a decline in performance or an adverse report. If the decline was due to forced distribution limits, explain as such.”

d. Omitting the forced distribution statement resulted in a misleading evaluation of your record which can create complications for every promotion board for which you are eligible. This procedural violation on your detaching fitness report deprived the promotion board of necessary context and created the false appearance of declining performance. Since you have supporting documentation from the RS confirming the change in promotion recommendation was due to forced distribution, PERS-32 determined the detaching fitness report is incorrect.

e. The contested report should have been rejected for lack of required signature. Since the fitness report contained a decline in promotion recommendation and lacked the required forced distribution statement, PERS-32 explained that it is considered an adverse report and required signature.

(2) Since the invalid detaching fitness report has remained in your record for the last three promotion cycles, it has unfairly influenced your evaluations before the Fiscal Year (FY) 2023, FY 2024, and FY 2025 promotion selection boards (PSBs) due to the appearance of being adverse. After removal of the contested report, as outlined in SECNAVINST 1402.1, your record – absent the fitness report – should be considered by a SSB for selection to Captain. Specifically, you contend PERS-32 explained that the two issues present in your detaching report are “administrative errors,” making the PSB’s decision based on an administrative error and lacking critical material information when evaluating your record.

(3) The Board, in its previous decision, misinterpreted 10 U.S. Code § 1034 and DoDD 7050.06, when it determined there was insufficient evidence to conclude you were the victim of reprisal. You specifically contend this conclusion does not acknowledge how your Request for Redress (RFR) did not qualify as reprisal under 10 U.S. Code § 1034. Specifically, you contend the following:

a. The Board's assessment relied on the Navy Inspector General's (NAVINGEN's) assessment which did not recognize your RFR as protected communication (PC) despite the DoDD 7050.06 definition and the legal definition under 10 USC 1034(b)(1)(B)(iv).

b. Your RFR is a protected communication because: (1) It was submitted directly to your CO; (2) You documented the CO's repeated failures in communication, administrative negligence, and inconsistent application of regulations that hindered your ability to execute your duties effectively; and (3) You outlined specific ways in which the CO's decisions disrupted your ability to perform ██████████ leading to adverse career consequences.

c. The Board incorrectly relied on NAVINGEN's assessment that did not address retaliatory personnel actions (PA). Specifically, you contend that after submission of your RFR, a pattern of unfavorable PAs occurred.²

d. The CO demonstrated intent to cause harm through her cumulative actions. Her actions were not isolated incidents but part of a broader pattern of misconduct that undermined your evaluation, restricted transparency, and negatively impacted your promotion prospects. You contend the pattern led to an unfair and inaccurate evaluation of your performance, directly affecting your ability to compete for promotion. Specifically, by repeatedly deviating from standard procedures, the CO manipulated the fitness report process to alter rankings, omit required justifications, and prevent you from contesting an unfair evaluation. The CO's response to the RFR (as quoted by the Board's previous decision document) stated the CO's intent but the CO's actions afterward continued to present issues as communication remained a persistent

² The CO engaged in a deliberate pattern of retaliatory PAs: (1) Downgrading your promotion recommendation from EP to MP without the required justification and creating an adverse perception of declining performance; (2) Manipulating your fitness report grouping to prevent a fair comparison with your peers and altering the competitive ranking structure; (3) Failing to correct the administrative error that PERS-32 later confirmed rendered your fitness report procedurally invalid; (4) Instructing you to mail in your report, knowing that it had already been rejected by PERS-32 instead of correcting the errors as directed, which delayed the resolution and potentially compromised your record; (5) Refusing to provide your Summary Group Average which deprived you of transparency in your evaluation and prevented you from recognizing you had dropped from above to below her RS Cumulative Average; (5) Withholding your EOT award, despite established precedent, tracking in the unit's plan of the month, and clear expectations that it would be submitted; (6) Denying EOT award on a policy that did not exist in the NAVSUP awards instruction, stating your position did not warrant one; and (7) Depriving you of recognition and diminishing your competitive standing for promotion as awards are also reviewed at a PSB. Additionally, in your 29 April 2025 response, you also contend the following PAs: (1) The CO lied about your competitive standing by claiming she had evaluated "many" O-5 officers; (2) The CO deliberated delayed submission of your fitness report; (3) Throughout your time under her leadership, the CO failed to provide transparency regarding your performance progression across your second and third fitness reports; (4) The CO undermined your mentorship opportunities; and (5) The CO withheld critical information regarding her decision not to recommend you for promotion to Captain on your detaching fitness report.

challenge throughout her tenure. This is not merely a personal assertion – but a concern supported by five personal statements from unit members – including three in key leadership positions – who independently cited her inconsistent and delayed communication and administrative failures as ongoing problems.

e. In addition to the CO's actions being taken in retaliation for your RFR, you also contend the cumulative effect of her actions³ demonstrates an intent to cause harm, regardless of motivation. In your case, the only identifiable factor prior to these adverse actions was your RFR, reinforcing the conclusion that it served as the catalyst for the deliberate pattern of unfavorable treatment.

(4) The CO's retaliatory behavior also constitutes a breach of statutory duty under 10 USC § 8167 which requires all COs and others in authority within the naval service to set a personal example of virtue, honor, and subordination, and to promote the morale and welfare of those under their command. You further contend the CO's behaviors also violated Article 92 of the UCMJ because her conduct – both prior to and after your PC – including fabricating standards, obstructing career progression, and selectively withholding awards under a fabricated policy, directly undermined the trust, fairness, and leadership obligations mandated by these statutes and regulations. Specifically, you contend:

a. The CO's actions following your RFR, particularly in her handling of your fitness report and subsequent retaliatory behavior, are in direct contradiction to these standards.

b. Rather than embodying the values of exemplary conduct, the CO's actions reflected a failure to uphold the integrity and responsibility required by this regulation. By disregarding her duty to provide clear feedback, manipulating the evaluation process, and undermining your promotion prospects, the CO failed to meet the moral and ethical obligations mandated for officers in her position.

(5) The relationship between the CO and ██████████ potentially influenced your fitness report evaluation and subsequent promotion consideration.

(6) In addition to reprisal, you experienced conduct that meets the SECNAVINST and DoD definitions of maltreatment, which include: "Treatment by peers or by other persons that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose... and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering." Specifically, you contend the stress, anxiety, and professional instability caused by the CO's behavior -- compounded by the unresolved fitness report – have affected both your mental and physical

³ The Board noted your extensive detailed discussion, to include "Why This Matters" and "Why This Demonstrates Intent," of the following actions in your submission: (1) Misclassification of fitness report in order to separate you from your peers; (2) Manipulation of leadership trait scores; (3) Avoidance of promotion discussion and withholding of guidance; (4) Instructing you to resubmit a fitness report that had already been rejected; (5) Manipulation of promotion group to influence rankings; (6) Failure to justify promotion recommendation downgrade in block 41; (7) Omitting the summary group average to prevent transparency; and (8) Withholding your EOT award which was a deviation from standard practice.

well-being. This has reached the point that you have had to seek and continue to receive medical care for both mental and physical health concerns. This pattern of behavior was not only retaliatory, but it also meets the definition of maltreatment under governing instructions.

(7) The CO's' repeated errors and unwillingness to follow the instructions provided by PERS-32, even after receiving guidance from them, demonstrate a pattern of behavior that raises questions about her intent. While the PERS-32 AO states there is no evidence of an "illegal or improper purpose," the CO's actions suggest an underlying motive to limit your promotion chances and indicate a potential abuse of discretionary authority. These actions, taken together, reveal a clear pattern of improper handling of your fitness report, even if the intent is not explicitly stated, and undermine the BUPERSINST 1610.10E guidelines established to ensure fairness and accuracy in evaluations.

(8) For the FY 2024 PSB, the CO served as a board member, which created a clear conflict of interest. As outlined in DoD Instruction 1320.14, SECNAVINST 1402.3, and the precepts for the PSBs, board members are required to perform their duties without prejudice or partiality. The three instructions go on to state that if at any time a board members believes that they cannot in good conscience perform their duties as a member of the board without prejudice or partiality, they have a duty to request relief from this duty. Moreover, if personal knowledge or involvement with an officer could be considered adverse, it must not influence the board unless it is part of the official record. You specifically contend:

a. The CO had personal involvement with you and exhibited adverse, retaliatory actions towards you immediately after you submitted an Article 138 RFR and as a result underwent an Inspector General (IG) investigation for retaliation.

b. Given these factors, you contend the CO's presence on the PSB had the potential to influence the proceedings. These actions, coupled with the IG investigation into the CO's conduct, raise significant doubts about her ability to act impartially. Even if she chose to remain silent during the review of your record, her presence on the PSB as a voting member had the potential to directly create unfair bias in the PSB's overall decision-making process. The likely absence of any advocacy on your behalf, both in your fitness report and potentially during the board review, combined with the incomplete information in your fitness report, has a strong preponderance of unfairly and negatively influencing how other board members perceived your promotion potential. For these reasons, the CO's failure to recuse herself from the PSB creates a clear conflict of interest, which compromised the integrity of the promotion process.

In order to assist in its review, the Board obtained an AO from PERS-32. The AO noted that your interaction occurred with three different support agents with different responses but a final email response from PERS-32's Lead Supervisor provided clarification the contested fitness report was not declining according to BUPERSINST 1610.10E. Specifically, the AO explained that a decline in performance is defined in the instruction as receiving lower grades on two or more performance traits in the same pay grade by the same RS on subsequent reports. Further, the AO noted a change in promotion recommendation caused by forced distribution is not considered a decline in performance nor an adverse report. In your situation, as the performance traits were graded identical, receiving a lower promotion recommendation in a larger summary

group is not considered a decline in performance nor an adverse report. Therefore, RS justification was not required. Additionally, the AO stated the report does not require your signature and can be marked “Certified Copy Provided” because it was not an adverse fitness report. PERS-32, having determined the fitness report was valid and not in violation of BUPERSINST 16101.10E, recommended the contested report remain in your record.

Additionally, the Board obtained an AO from PER-80 to assist the Board regarding your request for a SSB. The AO recommended a SSB be granted if the contested report was removed by the Board or otherwise determined to involve material error of fact or administrative error. Further, the AO specified that if a SSB was granted, “more than one SSB should not be awarded” by the Board. Rather, the Board should grant an SSB for the first PSB affected by the error or for the particular PSB for which relief was sought.

You provided rebuttal to the PERS-32 and PERS-80 AOs in a single document, with enclosures, dated 8 August 2025. The Board considered the entirety of your rebuttal, the following points reflect a summary of your rebuttal contentions:

(1) You reiterated the CO’s failure to “explain as such⁴” that forced distribution, as she acknowledged in correspondence to you, was the reason for the change in promotion recommendation constituted a material administrative error. Specifically, you explained that by failing to include the forced distribution statement, the CO rendered the fitness report not “accurate, complete, [nor a] fair portrayal of your career.”

(2) Further, you contend this “error” and “omission” of the forced distribution statement “precluded” you from “proper consideration” and “deprived” you of “fair and impartial consideration” for promotion to the paygrade of O-6 by all past PSBs.

(3) You also emphasized that the required forced distribution statement, had it been properly included, would have informed PSBs that the change in promotion recommendation was not performance-related, which is critical context that protects an officer from being unfairly evaluated as having declined in performance. Without this clarification, you contend the PSB “may incorrectly interpret the change as a reflection of diminished capability or effectiveness, when in fact it was a structural limitation imposed by the reporting system, not a reflection of the officer’s actual performance.”

(4) You stated PERS-32 has still failed to address your central question regarding the omission of the forced distribution statement. You further noted this is “particularly concerning” in light of BUPERSINST 5420.21A which states “the advisory opinion discloses facts considered essential to a complete and impartial review” and must “explicitly reference all policies, regulations, and other guidance relevant to the issues.” Further, you highlight the instruction requires that review of claims “be carried out from the standpoint that the petitioner is correct until proven otherwise.”

⁴ The Board noted BUPERSINST 1610.10E states “[i]f the decline was due to forced distribution limits, explain as such.”

(5) The issues surrounding the omitted forced distribution statement are not an isolated administrative issue but part of a larger pattern of conduct that meets the definition of reprisal and maltreatment under SECNAVINST 5370.7 and DoDD 7050.06. Specifically, you contend you made a PC in the form of an Article 138 complaint against your CO. Following your PC, you contend you experienced unfavorable PAs and the withholding of favorable PAs.

The Board completed a comprehensive review of your request to remove the contested fitness report and grant an SSB. This review included consideration of the entirety of your submission, to include all “additional narrative” and responses provided since your initial submission, as detailed above and in the footnotes. The Board determined there is insufficient evidence of error, injustice, misconduct, reprisal, or maltreatment and concluded the fitness report is valid.

The Board noted the core of your petition rests on your claim the omission of a forced distribution statement rendered the report procedurally invalid and effectively adverse. In your rebuttal, you highlighted that BUPERSINST 1610.10E states, “If the decline was due to forced distribution limits, explain as such.” You argued that by failing to include this statement, the CO rendered the report not an “accurate, complete, [nor a] fair portrayal of your career. You contended the omission “precluded” and “deprived” you of “fair and impartial consideration” for promotion by all past PSBs, as boards “may incorrectly interpret the change as a reflection of diminished capability or effectiveness.” Additionally, you expressed concern the PERS-32 AO failed to address this central question. You cited BUPERSINST 5420.21A, noting that reviews must explicitly reference all policies, disclose essential facts, and be carried out from the standpoint the petitioner is correct until proven otherwise.

The Board carefully weight these rebuttal arguments but concluded the PERS-32 AO provided a legally sufficient review. Under the strict criteria of BUPERSINST 1610.10E, a fitness report is only considered to reflect a decline in performance -- and therefore become adverse -- if there is a reduction in performance trait grades. In your specific case, your performance traits remained identical to your previous evaluation. PERS-32 clarified that a change in promotion recommendation resulting from forced distribution within a larger summary group does not constitute a decline in performance. Because it is not a decline in performance, the instruction to “explain as such” acts as administrative guidance rather than a strict mandate that invalidates the report, if omitted. Further, because the report was non-adverse, your signature was not a regulatory requirement. The Board found no basis to conclude the omission of the statement created a false appearance of declining performance that would mislead a PSB.

You further emphasized the omitted forced distribution statement was not an isolated administrative issue, but part of a larger pattern of conduct meeting the definition of reprisal and maltreatment following a RFR submitted to your CO. The Board carefully analyzed your extensive contentions that the CO engaged in a deliberate pattern of retaliatory PAs and demonstrated an intent to cause harm following your RFR.

To establish a claim of reprisal under 10 USC § 1034, there must be clear evidence that: (1) a PC occurred, (2) a PA was taken, withheld, or threatened, (3) the individual responsible for the PA had knowledge of the PC, and (4) the PC was the catalyst for the PA. The Board first looked at whether your RFR was a PC and concurred with NAVINSGEN’s determination that a PC did not

occur. The Board viewed your RFR as personal grievances against the CO rather than a report of a violation of law or regulation, gross mismanagement, or an abuse of authority. Simply stated, your RFR failed to meet the definition delineated in DoDD 7050.06.

Even if your communication had been protected, the Board exhaustively reviewed your specific claims regarding the CO's subsequent actions. You contend that following your RFR, you experienced a pattern of unfavorable PAs and the withholding of favorable PAs. Specifically, you claimed the CO manipulated your fitness report grouping and misclassified the report to prevent fair peer comparison, manipulated leadership trait scores, downgraded your promotion recommendation without justification, omitted the summary group average to prevent transparency, and deliberately delayed the report's submission while instructing you to mail a report she knew PERS-32 had rejected. The Board determined the management of summary groups, competitive rankings, and trait scoring falls squarely under the inherent discretionary authority of the RS.

Regarding the CO's unwillingness to immediately follow the guidance provided by PERS-32, the Board concluded the CO's administrative processing of the report does not establish an underlying motive to limit your promotion, nor does it constitute an abuse of discretionary authority. Additionally, you contend the CO improperly withheld your EOT award based on a fabricated policy, thereby diminishing your competitive standing. The Board emphasized that the submission and approval of military decorations are highly subjective command decisions. A deviation from standard practice or unit expectations does not establish illegal intent or constitute a retaliatory PA.

The Board also addressed your assertions the CO lied about her evaluation history of O-5 officers, undermined your mentorship opportunities, avoided promotion discussions, and withheld critical feedback regarding your performance progression and her decision not to recommend you for Captain. The Board considered your assertions as well as the five personal statements from unit members citing the CO's inconsistent communication and administrative failures. While the Board acknowledges your clear dissatisfaction with the CO's leadership, communication style, and lack of transparency, these interpersonal friction points describe workplace challenges not statutory retaliatory actions.

Accordingly, the Board determined your contention the CO's actions constituted a breach of statutory duty under 10 U.S.C. § 8167 and/or a violation of Article 92 of the UCMJ was without merit. The Board determined there is no evidence to support allegations of criminal misconduct, dereliction of duty, or a failure to uphold exemplary conduct. Similarly, while you contend the cumulative effect of the CO's behavior meets the definition of maltreatment due to the stress, professional instability, and medical concerns you have experienced, the Board determined the CO's actions were neither objectively abusive nor unjustified for lawful military purposes. Professional friction resulting from standard administrative evaluations and discretionary command decisions, while difficult, does not meet the legal threshold for maltreatment under SECNAVINST or DoD definitions.

The Board also considered your contention the relationship between the CO and ██████████ potentially influenced your fitness report evaluation and subsequent promotion

consideration. The Board determined these assertions to be speculative. You provided no documentary evidence demonstrating outside interference, improper command influence, or bias stemming from this relationship in the drafting of your fitness report or during the promotion selection proceedings.

Finally, your concerns regarding the CO's participation as a voting member on the FY 2024 PSB were also given full consideration. Navy PSBs operate under a strong presumption of regularity and are governed by strict precepts requiring all members to act without prejudice. Personal involvement with an officer or participation in a prior IG investigation does not automatically mandate recusal unless it can be proven the member was unable to remain impartial. The Board determined you provided no evidence the CO improperly influenced the PSB's deliberations or shared information outside of the official record. In the absence of documented proof of bias or a violation of the board member's oath, the Board must maintain the integrity of the PSB's original decision.

In summary, because the contested fitness report was found to be factually and administratively accurate, the Board concluded the PSBs that considered you for selection to Captain were presented with a complete and fair portrayal of your career. As there was no material error of fact, a SSB is not warranted under SECNAVINST 1402.1. Additionally, the Board noted the approval of personal awards is not within its purview but considered your contentions and discussions regarding the EOT award as evidence provided to support your claims of PAs.

In closing, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC §1034. 10 USC § 1034 provides the right to request Secretary of War review of cases with substantiated reprisal allegations where the Secretary of the Navy's (SECNAV's) follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with Department of War policy you have the right to request review of the SECNAV's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the SECNAV acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC § 1034(c) the Secretary of War cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the ██████████
██████████

Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your Board application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the Board, therefore, please also include previously presented documentation that supports your statements.

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,

4/27/2026

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