



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

Docket No. 5563-25
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 18 March 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 19 May 2025 advisory opinion (AO) provided the Bureau of Naval Personnel, Office of Legal Counsel and your response to the AO.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to be reinstated to the rank of Hospital Corpsman First Class Petty Officer (HM1), to be issued all backpay and allowances, to be provided assistance in obtaining a Chronological Record of Medical Care (SF 600) from your accuser that you believe disproves the allegations against you, and to have all adverse materials related to the allegations removed from your Official Military Personnel File (OMPF). You contend that documentation exists to prove the allegations against you were false, the administrative discharge board (ADB) held in your case unanimously found the allegations were false, the Inspector General (IG) advised you to apply to the Board for relief, and multiple personnel listed as witnesses against you have refused to provide information and emails in their possession, hindering your access to factual evidence.

The Board concurred with the AO, in its entirety, finding that you did not meet the burden of proof, or show by preponderance of evidence, probable material error, substantive inaccuracy, or injustice warranting the relief requested.

As a preliminary matter, the Board relies on a presumption of regularity to support the official actions of public officers, and in the absence of substantial evidence to the contrary, will presume they have properly discharged their official duties. The Board applied this presumption to the adverse materials in your case, including your non-judicial punishment (NJP) of 23 May 2019 and subsequent Page 13 counseling entry, and found your evidence insufficient to overcome this presumption. Specifically, the Board found your NJP, which formed the basis for the counseling entry, was properly conducted and valid. Therein, you were charged with, and found guilty of, violating Article 128 (assault consummated by battery) of the Uniform Code of Military Justice (UCMJ) for your treatment of the victim in your case. Your punishment included reduction to the next inferior paygrade, and forfeiture of 1/2 month's pay for two months. Additionally, you exercised your right to appeal the NJP, your appeal was appropriately reviewed, and ultimately denied. As previously stated, after your NJP, as would normally be the case, you were issued a Page 13 counseling entry documenting the NJP. The Board found no error or inaccuracy in either the NJP or counseling entry, and concluded removal of these, and related adverse materials, from your OMPF was not warranted.

Regarding your contention that exculpatory evidence exists, to which you lack access, the Board opined, it is not the Board's responsibility to acquire evidence on your behalf. In making its determination, the Board relies on information in a Petitioner's OMPF or official medical record, along with evidence provided by a Petitioner. That said, the Board acknowledges you believe evidence has been withheld that could exonerate you. However, the Board is not an investigative body and does not have the authority to grant you access to another service member's protected health information (PHI). As the AO explained, a victim, or any other service member, cannot be ordered to produce PHI to be given to another service member. On a similar note, regarding other potential evidence you believe exists and has been withheld, whether contained in emails or otherwise, the Board, again, has no authority to search for, or require production of, such materials.

Regarding your contention that the ADB found the allegations against you to be false, the Board found this contention unpersuasive. As the AO stated, no legal mechanism exists for an ADB to overturn an NJP. While an NJP is a disciplinary process available to a commander to address misconduct, an ADB has a fundamentally different purpose of determining a service member's suitability to serve on the basis of conduct and ability to meet and maintain the required standards of performance. An ADB is not intended as, nor does it function as, a method to overturn or invalidate an NJP. Although your ADB did not find sufficient evidence to warrant your separation, that finding did not impact the validity of your NJP or counseling entry. Simply put, the Board determined that it is not a material error or injustice for two separate fact-finding bodies, in your case the NJP and ADB, to arrive at different conclusions.

Regarding your rebuttal to the AO, wherein you offer a female corpsman manning deficiency as reason for your failure to follow protocol to offer a same-sex standby during the medical exam, the Board was not persuaded by your argument. The Board opined, insufficient manning did not

justify your failure to follow protocol. Although the Board noted your previous attempts to raise manning issues with your chain of command, the Board concluded, rather than breaking protocol, you should not have proceeded with the exam but should have, again, attempted to bring the matter to the attention of your chain of command.

As a final note, although you contend the IG advised you to petition the Board, the Board found this matter not relevant to its decision. You had the right to petition the Board regardless of an IG recommendation to do so, and any such recommendation has no bearing on the Board's independent decision on your case. Accordingly, given the totality of the circumstances, the Board determined 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,

4/2/2026

