



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. 8606-20
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 21 October 2021. 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 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 remove the following adverse material from your official military personnel file (OMPF): the Report of Misconduct (ROM) and the Report of the Board of Inquiry (BOI).

The Board noted that on 25 July 2019, a general court-martial (GCM) acquitted you of all charges stemming from violations of Articles 128 and 133 of the Uniform Code of Military Justice (UCMJ). Specifically, you were found not guilty of assault upon a child under the age of █ by strangling him, assault by battery, and conduct unbecoming an officer due to being drunk and disorderly. While the GCM found the evidence in the case did not satisfy the criminal standard of beyond a reasonable doubt, the Commanding General, █ reviewed the evidence, to include the investigation, witness testimony, and forensic evidence, and concluded the preponderance of the evidence standard had been met. Having determined the evidence was more than adequate to substantiate misconduct warranting

administrative action, the Commanding General, in his 12 September 2019 ROM to the Commandant of the Marine Corps (CMC) recommended you be required to show cause for retention in the Marine Corps. You submitted a response to the ROM on 3 October 2019, which included 25 advocacy letters from officers in the Marine Corps and Navy, detailing “troubling issues,” which were never resolved by the government’s presentation of evidence.

On 18 October 2019, the [REDACTED] [REDACTED] forwarded the ROM to the CMC via the Commanding General, [REDACTED], with no change to his recommendation after reviewing your 3 October response and accompanying documents. The CG, [REDACTED] concurred with the ROM’s recommendation, and in separate correspondence, directed the case be referred to a Board of Inquiry (BOI) to consider whether you should be retained. Specifically, the BOI was directed to consider the following specific reasons for separation: substandard performance of duty, misconduct, and moral or professional dereliction of duty as evidenced by (1) failure to demonstrate acceptable qualities of leadership required of an officer in the member’s grade; and (2) commission of a military or civilian offense that could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction.

Pursuant to SECNAV Instruction 1920.6C, on 30 April 2020, you appeared before a BOI. The BOI unanimously determined that a preponderance of the evidence did not prove the allegations and, in its Report of BOI, recommended closing the case. In your 8 May 2020 response to the Report of BOI, you stated you had “maintained [your] innocence throughout this process which is why [you] chose to defend [yourself] at a GCM and a BOI.”

Based on being acquitted of all charges and allegations and “the unfounded nature of these allegations,” you requested the adverse material not be included in your OMPF. However, on 24 September 2020, the CMC terminated the administrative proceedings but determined the adverse material concerning this matter would be included in your OMPF.

The Board considered your contentions the ROM and Report of BOI should be removed from your OMPF because the allegations each report was based upon have “been proven false on two separation occasions.” You further contend the adverse material should be removed so the “false and unsubstantiated allegations cannot be held against [you] in future promotion boards because the inclusion of the adverse material is “neither supported by the relevant references nor in the interest of justice.” The Board further considered your specific contention the ROM is neither substantiated nor credible and does not meet the definition of adverse material in the Department of Defense Instruction (DoDI) 1320.04. Additionally, the Board considered your contention the ROM is a direct summary of an unsubstantiated Naval Criminal Investigative Service (NCIS) investigation, and since Marine Corps Order (MCO) P1070.12K does not allow inclusion of law enforcement investigations conducted by NCIS to be filed in the OMPF; a direct summary should also be prohibited. The Board also considered your contention MCO 5800.16 Volume 15 states “all reports must include a copy of the investigation (unless classified) upon which the substantiation of misconduct was based.” You contend that the adverse material in your OMPF does not include any evidence related to the case therefore it is error and injustice, per this instruction, for the adverse material to be retained in your OMPF.

Upon review and consideration of all the evidence of record and applicable references, the Board determined your request does not warrant relief. The Board, noting the CG [REDACTED] concluded the evidence was “more than adequate to substantiate misconduct,” determined it was not error or unjust for the Commanding General to conclude differently than the GCM or BOI. Further, the Board determined the GCM’s acquittal and the BOI’s decision do not render the underlying evidence of the ROM and Report of BOI as “neither substantiated nor credible” and concluded the ROM and Report of BOI meet the definition of adverse material. Further, the Board determined a summary of evidence derived from the NCIS investigation does not preclude the ROM from being filed in an OMPF. Lastly, the Board concluded MCO 5800.16 Volume 15 does not require the filed adverse material to include a copy of the investigation. The Board concluded the ROM and Report of BOI are both authorized to be filed in your OMPF and all requirements for including the adverse material in your OMPF have been satisfied.

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,

11/5/2021

[REDACTED]

Executive Director

[REDACTED]