

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No: 155-21 Ref: Signature Date



## Dear

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 28 September 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 carefully considered your request to remove your 11 April 2018 Administrative Remarks (page 11) 6105 counseling entry and rebuttal statement. You also request to remove the correspondence requesting to withhold your Marine Corps Good Conduct Medal (MCGCM). The Board considered your contention that your actions did not qualify as disorderly conduct under the Uniform Code of Military Justice (UCMJ) and applicable case law. You also contend that your page 11 was already signed by the commanding officer (CO) demonstrating that he had already made up his mind before allowing you to respond to the allegation, the page 11 entry suggest that you have a problem with alcohol, and the recommendation to refrain from drinking alcohol was not warranted. You claim that the Navy Criminal Investigative Service (NCIS) investigation provided conflicting accounts of a confusing, but not criminal interaction between two adults. You also claim that the prosecutor and Sexual Assault Disposition authority did not substantiate a violation of the UCMJ and you were denied the opportunity to view the investigation.

The Board, however, determined that your page 11 entry is valid. In this regard, the Board noted that pursuant to the Marine Corps Separation and Retirement Manual, you were issued a page 11



entry counseling you for attempting to kiss another married service member who was not your husband. The Board also noted that you were properly counseled and determined that the contested entry was written and issued according to the Marine Corps Individual Records Administration Manual (IRAM). Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entry and determined that your performance was a matter essential to record, as it was his/her right to do. The Board also determined that a specific violation of the UCMJ is not required for your CO to determine that a disciplinary infraction occurred. The Board also determined that, although the Sexual Assault Disposition Response report revealed insufficient evidence to prosecute you at a trial, your CO had sufficient knowledge of the facts to determine that your page 11 entry was warranted.

Concerning your contention that your page 11 entry's suggestion that you have a problem with alcohol and the recommendation to refrain from drinking alcohol was unwarranted, the Board noted that the NCIS investigation referenced a statement that you were believed to be intoxicated, as a result, you were appropriately referred to your command Substance Abuse Control Officer to be evaluated for substance abuse. The Board determined that the finding of no substance abuse disorder, did not preclude your CO from recommended that you refrain from drinking alcohol. Regarding your annual fitness report, according to the Marine Corps Performance Evaluation System Manual reporting seniors (RSs) are granted discretionary authority to determine if an adverse fitness report is warranted after the issuance of a page 11 entry during the reporting period. Thus, your RS was not required to issue an adverse fitness report.

Concerning your request to remove the correspondence requesting to withhold your MCGCM, the Board determined that the correspondence is valid and forms an essential part of your record that is not recorded elsewhere. Concerning your requirement to submit a Freedom of Information Act (FOIA) request to obtain a copy of the NCIS investigation, the Board determined that your requirement to submit a FOIA request was valid and the appropriate method to obtain an appropriately redacted copy of the NCIS investigation. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

