



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

█
Docket No. 1497-21
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 17 February 2022. 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 correct your Official Military Personnel File (OMPF) as follows:

- 1) Disapprove the findings of the Board of Inquiry (BOI);
- 2) Provide constructive credit for the period of discharge;
- 3) Remove all adverse/negative material regarding investigation, nonjudicial punishment (NJP), and BOI;
- 4) Promote to lieutenant colonel (O5) with a 1 August 2015 date of rank;

5) Delete all “passed for selection” marks which may exist as a result of delay in promotion;

6) Award reimbursement for September 2015 rent in the amount of \$2087.59.

The Board noted an earlier request, Docket No: NR20160009387, granted partial relief by authorizing reimbursement for your two days, one night Temporary Additional Duty (TAD) to [REDACTED] in July 2015, to include reimbursement for the mileage used for your privately owned vehicle and overnight lodging. All other requested relief in Docket NR20160009387 was denied. Specifically, in your previous submission, you requested the Board (1) disapprove the findings of the BOI and halt your involuntary separation or, conversely, if the Board concurred with the BOI findings, then disapprove the BOI’s recommendation for separation; (2) remove all adverse/negative material regarding the investigation, NJP, and BOI; (3) promote you to lieutenant colonel with a 1 August 2015 date of rank; (4) delete any “passed for selection” marks in your OMPF; (5) award reimbursement for your September 2015 rent; (6) enter into your OMPF two fitness reports (FITREPs) for the reporting periods 20 December 2014 to 31 May 2015 and 1 June 2015 to 26 August 2015; (7) correct the reporting period for your FITREP ending 19 February 2014; (8) correct the cumulative average on the FITREP for the reporting period 1 June 2004 to 30 September 2004; (9) correct the cumulative average on your FITREP for the reporting period 15 April 2004 to 15 June 2006; (10) provide assistance with documentation for presentation to the Department of the Navy Central Adjudication Facility (DONCAF) in order to reinstate your security clearance; and (11) give you constructive credit, if separated, for the period that you were discharged. Additionally, in the previous denial, the Board noted the request for reimbursement of the September 2015 rent did not fall under its purview and informed you that a claim for reimbursement should be made to the Defense Finance and Accounting Service (DFAS).

In your current request for correction, the Board noted you again ask for the same corrections to your record, with the exception of requesting corrections to your FITREPs or assistance with documentation for presentation to DONCAF. In your current request, you submitted detailed explanation of “new evidence” in support of your previous contentions, reemphasized several previous contentions, and introduced new contentions. The Board carefully reviewed and considered the evidence and contentions submitted in your request for reconsideration and the discussion added by your additional correspondence.

The Board considered each of your contentions regarding your mental health condition. Specifically, the Board considered your contention that your medical record was altered but noted the documents submitted in support of this contention were previously considered. Although unsure of the relevancy of this contention due to the chain of command and previous Board’s consideration of your Post-Traumatic Stress Disorder (PTSD) diagnosis, this Board determined there was insufficient evidence to support your contention. The Board also noted the PTSD diagnosis of the “5th medical professional.” Lastly, the Board again considered your contention regarding MARADMIN 328/10. This Board does not dispute your PTSD diagnosis and noted the diagnosis was repeatedly and carefully considered prior to your separation. These contentions regarding your mental health diagnosis have been fully and carefully considered by the Board in light of the Secretary of Defense’s Memorandum “Supplemental Guidance to

Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post-Traumatic Stress Disorder” of September 3, 2014 and the Principal Deputy Under Secretary of Defense Memorandum “Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)” of 24 February 2016. After applying these guidelines to the evidence in the case, the Board was not able to substantiate a nexus between PTSD and/or TBI and your misconduct. The Board concurred with the previous Board’s conclusion that, even if the effects of PTSD and TBI existed at the time of your misconduct, the seriousness of the misconduct outweighed any mitigation that would be offered by the PTSD and/or TBI.

The Board considered the 13 March 2019 letter from [REDACTED] but noted the content, although stated differently, did not provide substantially new evidence. Specifically, the Board reviewed the previously considered letters from [REDACTED] 2 September 2015 and 26 October 2015 and a 30 October 2015 phone conversation transcript. These letters and transcript contain extensive comments from [REDACTED] regarding her personal opinion of you as an officer within the professional environment, specifically state she never felt sexually harassed by you, note your friendship, and describe the pressure she received from higher [REDACTED] officers to not get further involved or make any further statements. The Board determined [REDACTED] 13 March 2019 letter did not provide substantially new evidence and concurred with the previous Board’s conclusion the misconduct which led to your involuntary separation was substantiated. Specifically, the Board determined the new letter did not prove the Memorandum for the Record was fabricated or that the statements and accusations of the chief petty officers were false nor did it “underline the fraudulent nature of the investigation” which led to your NJP and subsequent BOI.

The Board also considered your contention you pled guilty at NJP and apologized to [REDACTED] for threatening her, an allegation you contend you did not commit, in an attempt to lessen the impact of the situation on your family. You further explain that you hoped you could eventually obtain a copy of the investigation and prove your innocence at your next command. The Board, noting these were not new contentions and the underlying evidence had previously been considered, determined the contentions were without merit and concurred with the previous Board’s substantiation of your misconduct.

The Board further considered the evidence you highlighted in your discussion of “protected communication” and noted each of the enclosures/attachments submitted in support of your contention was reviewed and considered by the previous Board. The Board considered your contention that your letter of 13 November 2014 was a “whistleblower” letter because you reported to the Major General that favoritism and unfairness were prevalent at the command. You further contend that once you submitted the letter, “the reprisals began.” The Board noted you filed a complaint with the Department of Defense Inspector General (DoDIG) hotline on 25 August 2016 alleging reprisal. On 13 September 2016, DoDIG notified you that your complaint was not timely filed because it was not filed within one year of becoming aware of the personnel action at issue. Because your complaint was denied based on untimeliness, the Board noted the reprisal allegation had not been specifically analyzed. Applying the Department of Defense Directive 7050.06 Military Whistleblower Protection and the Inspector General’s

guidance for analyzing allegations of reprisal, the Board determined there is insufficient evidence to support your contention that you were the victim of reprisal after submission of the 13 November 2014 letter.

The Board also considered the evidence and contentions regarding the denial of the requested BOI extension and [REDACTED] declination to be a witness at the BOI. The Board noted these contentions have been previously raised, as early as your letter of deficiency (LOD) submitted with the Report of BOI, but again considered the contentions and supporting information. This Board concurred with the previous Board's determination the BOI was conducted in accordance with Marine Corps regulations and again concluded these contentions have been thoroughly reviewed on multiple occasions at various levels of review and found to be without merit.

In your current submission, you contend, for the first time before the Board, that unsigned paperwork was wrongfully filed in your record resulting in the wrongful withholding and delay of your promotion. Specifically, you contend you were never initially notified that your promotion to lieutenant colonel was delayed nor were you re-notified every six months while the delay continued. Although you have not previously raised this issue, the Board noted the documents you submitted as supporting documentation are not new and have been previously reviewed by the Board. Further, in your rebuttal statement to the Deputy Commandant of Manpower and Reserve Affairs dated 13 June 2017, you stated "I am currently still selected, with a delayed promotion" indicating you were notified and aware of your delayed promotion. The Board also considered your contention the Secretary of the Navy never removed your name from the promotion list so you remain selected for the rank of lieutenant colonel. The Board noted that per 10 U.S Code Section 629, when an officer on the active duty list is discharged after having been recommended for promotion to a higher grade but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board. The Board, further noting an entry was made to your record on 9 October 2019 which nullified your promotion selection because you no longer have military affiliation, concurred with the previous Board's denial of your request to be promoted to lieutenant colonel.

The Board also considered your new contention [REDACTED] was recently investigated for misconduct, and the investigation found that his conduct throughout his tour as a Legislative Assistant to the Commandant of the Marine Corps "led to a general distrust of his impartiality and leadership." The Board considered your specific contention that the same lack of impartiality and ethical violations existed while [REDACTED] was the Deputy Commander at Marine Forces [REDACTED] and impeded you from obtaining the investigation and blocked your access to evidence. The Board determined your contention lacks sufficient evidence, and is therefore without merit.

Additionally, the Board considered your 6 December 2021 statement regarding the proper forums to raise concerns. You contend that, unlike [REDACTED] who used social media, you raised your concerns using the proper forums but "it did not matter" because "reprisals still took place," individuals were not held accountable, and adverse actions were left uncorrected. The Board determined your contention lacks sufficient evidence, and is without merit.

Upon review and consideration of all the evidence of record, this Board determined the new contentions and evidence are without merit and concluded there is insufficient evidence of an error or injustice warranting your requested relief. This Board concurred with the previous Board's findings and conclusions. The Board specifically noted you had the opportunity at NJP and the BOI to defend against the charges. Additionally, the Board considered that you pled guilty at NJP and later apologized for your behavior in response to your report of misconduct. Further, the Board considered each of your contentions, many which were first raised in your LOD and subsequently through numerous submissions during the various levels of review, and again found that you were afforded the due process required. Relying on the presumption of regularity in the conduct of government affairs, the Board concluded your contentions regarding the command investigation, NJP, Report of Misconduct, and BOI are without merit.

Additionally, as discussed in the NR20160009387 decision letter, your request for reimbursement of your September 2015 rent does not fall under the purview of this Board. You may submit a signed claim for reimbursement to the DFAS using the Application for Arrears in Pay (DD Form 827). You must provide, in part, your contact information, the amount claimed, stating the reasons why the Government owes you that amount, and you must attach copies of documents referred to in the claim.

Based on these findings, the Board determined there was no basis to disapprove the findings of the BOI; provide constructive credit for the period of discharge; remove the adverse/negative material regarding the investigation, NJP, and BOI; promote you to lieutenant colonel (O5) with a 1 August 2015 date of rank; delete all "passed for selection" marks which may exist as a result of delay in promotion; or award reimbursement for September 2015 rent in the amount of \$2087.59.

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,

3/28/2022



Executive Director

Signed by: 