



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

■
Docket No: 2591-21

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 14 December 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, as well as the 14 June 2021 advisory opinion furnished by the Marine Corps Military Personnel Law Branch (JPL), and your response.

The Board carefully considered your request to remove your 30 March 2020 Administrative Remarks (page 11) entry, rebuttal statement, 26 June 2020 Report of Misconduct and associated documents. You also request to remove your fitness report for the reporting period 2 February 2020 to 31 March 2020. The Board considered your contentions that the allegations did not rise to the level of misconduct, your page 11 entry, and adverse fitness report are "vindictive," and represent an injustice. You also contend that according to the Marine Corps Performance Evaluation System (PES) Manual, receipt of a counseling entry does not automatically constitute derogatory material on the next fitness report. You claim that the Commanding General (CG), 2d Marine Division (2d MarDiv) stated that all allegations from the investigation were unsubstantiated, which led you to presume that the page 11 and adverse fitness report should have never been issued. You also claim that the Performance Evaluation Review Board (PERB) denied your request to remove your fitness report.

The Board noted that during January 2020, your Commanding Officer (CO) directed a Command Investigation (CI) into allegations that you sexually harassed and bullied a first lieutenant (1stLt). You were alleged to have used offensive and inappropriate comments that were meant as jokes, but had sexual undertones. The Investigating Officer (IO) found that the evidence did not prove a violation based on the strict definitions of bullying and sexual harassment, however, the IO did find that you created an unfavorable work environment and engaged in an inappropriate relationship with a junior officer. Based upon the CI, your CO determined that the available evidence led him to believe that an inappropriate relationship existed, amplified by poor decision making by a senior to junior officer, and that an unfavorable work environment was created.

The Board also noted that pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were issued a page 11 entry on 30 March 2020, counseling you for misconduct between July 2019 and January 2020 for developing an “unprofessional relationship with a 1stLt characterized by excessive alcohol consumption, immature banter, and a complete breakdown of the senior-subordinate relationship. The Board also noted that you acknowledged the entry and elected to submit a statement. In your statement, you acknowledging having made mistakes in your career, explained your leadership philosophy and attempts to assist the 1stLt. The Board determined that the contested entry was written and issued according to the IRAM. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, and it afforded you the opportunity to submit a rebuttal. Moreover, the CG, 2d MarDiv determined that your misconduct was a matter essential to record, as it was his right to do.

The Board further noted that during April 2020 a second CI was directed into allegations that you and a Staff Non-commissioned Officer were found asleep, inside a building used for the unit’s social events, and that you were potentially still intoxicated. The IO opined that, after a night of drinking, you were not “fit for duty” the next day. The IO concluded that you may have provided a false statement to Battalion leadership about your platoon accountability and recommended appropriate administrative action/punishment. The Board also noted that the CG, 2d MarDiv documented both incidents in a 26 June 2020 Report of Misconduct.

The Board substantially concurred with the AO that you page 11 entry and Report of Misconduct are valid and should remain in your record as filed. In this regard, the Board noted that the first CI concluded that you did not sexually harass or bully the 1stLt within the strict definition of the PAC order, however, it did note that you placed yourself in a compromising position by not upholding the established standards expected of commissioned officers in the Marine Corps. The Board also noted that your CO and the CG, 2d MarDiv concurred with the CI regarding allegations of sexual harassment and bullying and you were not counseled for sexual harassment or bullying, however, the Board determined your page 11 was properly issued for your unprofessional relationship, characterized by excessive alcohol consumption, immature banter and a complete breakdown of the senior-subordinate relationship as substantiated in two CIs. The Board also determined that the CG, 2d MarDiv had sufficient knowledge of the facts and acted within his discretionary authority by determining that your page 11 entry was warranted. The Board found no evidence that your chain of command acted inappropriately when issuing your page 11 entry and Report of Misconduct you provided none. Moreover, the Board relies on a presumption of regularity to support the official action of public officers and, in the absence of

substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption.

Concerning the removal of your contested fitness report, the Board noted the PERB decision, but found no record that your fitness report was forwarded to the Board for adjudication. Therefore, the Board determined that you must exhaust your administrative remedies by submitting an inquiry to MMRP-13 regarding the final status of your request to remove your fitness report. 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,

1/11/2022

█

Deputy Director

Signed by: █