



**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: 3344-21

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.

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

The Board carefully considered your request to remove your 18 November 2020 Administrative Remarks (page 11) 6105 entry and rebuttal statement. The Board considered your contentions that your command failed to provide you with notice of the investigation and they attempted to conceal this failure. You also contend that the Investigating Officer (IO) did not understand the scope and breadth of his inherent authority to conduct the investigation and your alleged misconduct is not the manner of misconduct covered by the Marine Corps Prohibited Activities and Conduct (PAC) Manual. You claim that according to the PAC Manual, when an investigation is convened, commanders will cause individuals who are named by the complainant to be notified in writing within three duty days of convening the investigation. You also claim that sexual harassment requires that the conduct be service connected and have an

impact upon the complainant's career. You further claim that, at worst, you acted in a playful, pranking manner at a location distant from work and with no impact on the complainant's work environment or career, and no one witnessed the acts or complained to anyone in leadership present on the day of the alleged incident.

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 (MARCORSEPMAN), you were issued a page 11 entry counseling you for unprofessional conduct that was prejudicial to good order and discipline. The entry was based on a command investigation (CI) that found that you violated the PAC Manual, specifically, harassment and sexual harassment. The Board 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 commanding officer (CO) determined that your misconduct was a matter essential to record, as it was his/her right to do. The Board also noted that you acknowledged the entry and elected to submit a statement. In your statement, you denied any misconduct, argued that you were not notified of the outcome of the investigation and that the investigation was flawed.

Concerning your contention that you did not receive notice of the investigation as required by the PAC Manual, the Board noted that according to the PAC Manual, the convening authority (CA) will notify both parties, in writing within three duty days of the CA's administrative findings, their rights to a supervised review of the command investigation, and their right to appeal the CA's administrative findings. The Board also noted that you appealed the CA's findings and your appeal was denied. The Board determined that your request for an appeal is evidence that you received the appropriate notification. The Board also determined that even if, you were not notified of the CA's findings within three duty days, ultimately, you were afforded due process and the lack of timely notification does not invalidate your page 11 entry.

Concerning your contention that the IO did not understand the scope of his authority, the Board noted that both the Equal Opportunity Advisor (EOA) and Deputy Staff Judge Advocate (SJA) for █ reviewed the investigation and determined that the investigation complied with applicable legal and administrative requirements. In this regard, the EOA and SJA determined that the investigation thoroughly addressed the allegation of sexual harassment, the conclusions and recommendation of the IO were consistent with the findings, and the investigation provided a sufficient basis for the CO to make disposition decisions regarding the subject of the investigation. The Board found no evidence that the CI was flawed and you provided none.

The Board further noted that according to the Department of Defense Instruction (DODI) 1020.03, harassment includes unwanted physical contact that creates an intimidating, hostile or offensive environment and sexual harassment involves unwelcome sexual advances or gestures of a sexual nature and creates an intimidating, hostile, or offensive working environment. The Board determined that your misconduct was appropriately documented according to the PAC Manual and DODI. The Board further determined that a unit military social event is considered

to be military related and establishes a nexus between your misconduct and the creation of an offensive working environment.

The Board determined that the PAC Manual, authorizes commanders to take any authorized adjudicative action they deem appropriate if a PAC complaint is substantiated. In your case, your CO determined that a page 11 entry was warranted and the Board also determined that your CO had sufficient knowledge of the facts and acted within his discretionary authority when issuing your page 11 entry. 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. 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,

1/10/2022

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Deputy Director

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