



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

█
Docket No. 4532-21
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 16 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.

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 your 6 November 2019 Administrative Remarks (Page 11) counseling entry from your official military personnel file (OMPF). You contend the Page 11 counseling is without merit and in error. Specifically, you contend the counseling, which addresses allegations of both fraternization and poor judgment in the treatment of your ex-spouse and daughter, is the result of your ex-spouse and daughter retaliating against you when you filed for divorce. The Board also considered your contention the allegations of fraternization are in "direct error of military law and customs" because you were required to liaison with enlisted members stationed within the National Capitol Region. Further, you contend you did not fraternize on "terms of military equality" and your actions did not violate the Uniform Code of Military Justice (UCMJ) because they were not prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. Additionally, the Board considered your contention you signed the counseling entry as an acknowledgement of

receipt and not as a confession of guilt. The Board considered each of the documents you submitted as supporting evidence of your contentions.

The Board noted Commanding General, [REDACTED], [REDACTED], determined the command investigation substantiated by a preponderance of evidence that you had been emotionally and physically aggressive toward your ex-spouse and daughter and had also engaged in an inappropriate relationship with a female staff sergeant in violation of the UCMJ Articles 133 (conduct unbecoming an officer) and 134 (fraternization). By his determination you engaged in an inappropriate relationship with an enlisted Marine, the Commanding General expressed his conclusion your conduct met the UCMJ requirements for fraternization. The Board further noted the chain of command endorsers of the 6 November 2019 Report of Misconduct, submitted by your Commanding General, concurred with the command investigation, which was an enclosure to the Report of Misconduct, and recommended you be required to show cause for retention in the Marine Corps. In doing so, the reviewing chain of command concurred with the Commanding General's determination the preponderance of the evidence met the UCMJ requirements for each of the allegations. The Board also noted that you submitted a response to the Report of Misconduct on 22 November 2019 which explained that you had been facing a contentious divorce of a 17-year marriage and the "active alienation" of your only child. The Board further noted your response and sincere apology were routed with the Report of Misconduct and considered by the chain of command.

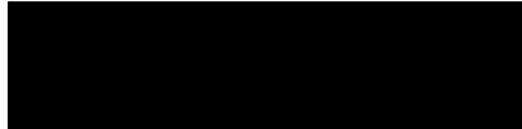
The Board also noted the Board of Inquiry (BOI) determined the preponderance of the evidence substantiated "misconduct and moral or professional dereliction" as a reason for separation for cause. Specifically, the BOI determined the evidence it reviewed supported the finding you had committed violations of Articles 133 and 134 of the UCMJ but the BOI found that the misconduct did not warrant your separation. Additionally, the Board considered the BOI Minority Report which was routed with the Report of BOI through the chain of command and noted its more detailed discussion of the evidence and testimony available to the BOI. The Board also noted you did not submit matters in response to the Report of BOI. Lastly, the Board noted the third endorsement to the Report of BOI provided by the Commanding General, Marine Corps Combat Development Command, to include his handwritten comment, and concluded the chain of command concurred with the majority of the BOI that the allegations of conduct unbecoming an officer and fraternization had been substantiated by a preponderance of evidence.

By signing the 6 November 2019 counseling entry, the Commanding General indicated that he believed the entry to be appropriate based on the findings of the command investigation and using a preponderance of the evidence standard. Concurrence with the Commanding General's determination was expressed by the chain of command's endorsement of the Report of Misconduct. Although a separate and distinct process, the BOI also concurred the preponderance of evidence supported a finding that you violated Articles 133 and 134 of the UCMJ. The Board further determined the entry met the counseling requirements detailed in MCO P1070.12K (IRAM) paragraph 3005, and the Commanding General was within his discretionary authority to issue the counseling. Moreover, you were notified that it will be filed in your record and you were afforded the opportunity to rebut the counseling but declined to submit a written rebuttal. The Board concluded there is insufficient evidence of material error or injustice warranting removal of the 6 November 2019 counseling entry.

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,

1/8/2022



Deputy Director

Signed by:

