



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: 4955-21
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 11 January 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 carefully considered your request to remove your 29 March 2021 unit punishment book (UPB)/non-judicial punishment (NJP) and 29 March 2021 Administrative Remarks (page 11) entry. The Board considered your contention that you accepted NJP, but pled not guilty because you did not commit the alleged misconduct. You also contend that you were ill advised by a military attorney to accept NJP despite your innocence and your commanding officer (CO) did not review all of the evidence or hear from all of the witness when he made his determination. You claim that the witness who made the allegation recanted at your administrative separation board (ASB) and the ASB found that none of the evidence supported a finding. You argue that your NJP should be removed because it resulted in an incorrect outcome, and the ASB made the correct decision.

The Board noted that pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN) you were issued a page 11 entry counseling you for being apprehended for unlawfully attempting to do bodily harm to your spouse with force or violence. You acknowledged the entry and elected not to submit a statement. The Board also noted that you received NJP for violating Article 128, Uniform Code of Military Justice (UCMJ) for being

arrested on 29 November 2020 by the [REDACTED] Police Department for attempting to do bodily harm to your spouse with force or violence. You were awarded reduction to E-3, forfeiture of pay, and restriction of which the forfeiture of pay and restriction were suspended. The Board noted, too, that you acknowledged your Article 31, UCMJ Rights, you were afforded the opportunity to consult with counsel, you accepted NJP, and you did not appeal your Commanding Officer's (CO's) finding of guilt at NJP. On 15 June 2021, your ASB unanimously found that the preponderance of the evidence did not prove any of the acts or omission alleged and the ASB recommended your retention in the Marine Corps.

The Board noted your ASB findings, however, the Board determined that the outcome of your ASB has no bearing on your CO's finding of guilt during your NJP. In this regard, according to MARCORSEPMAN, an ASB functions as an administrative rather than a judicial body. Accordingly, there is a sharp and distinct delineation between the administrative process which has as its purpose the administrative elimination of unsuitable, unfit, or unqualified Marines, and the judicial process, the purpose of which is to establish the guilt or innocence of a member accused of a crime and to administer punishment when appropriate. The Board also determined that your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.) and your CO acted within his discretionary authority when finding you guilty at NJP. 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,

[REDACTED]

Deputy Director

[REDACTED]