





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


Docket No: 5143-21
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 8 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 carefully considered your request to remove your 29 May 2019 Administrative Remarks (page 11) entry, 7 November 2019 Report of Misconduct (ROM) and all associated documents. The Board considered your contentions that because your Board of Inquiry (BOI) unanimously found that the allegations against you were unsubstantiated, the inclusion of the ROM and page 11 entry are an injustice, and the allegations remain unsubstantiated. You also contend that the Marine Corps Individual Records Administration Manual (IRAM) does not permit the inclusion of unsubstantial misconduct. You claim that since the allegations against you were unsubstantiated, the inclusion the ROM and page 11 entry is arbitrary and capricious and constitutes legal error. You also claim that the adverse material relied upon a single piece of evidence—the word of the complaining witness—and ignored other evidence.

The Board noted that pursuant to the IRAM, you were issued a page 11 entry counseling you for being drunk and disorderly on 13 June 2018, and while on a temporary duty assignment with an enlisted Marine, you consumed a significant amount of alcohol, exposed yourself and urinated on the floor and walls of your hotel room, attempted to wrestle with the enlisted Marine and the next day you were absent from training due to your overindulgence in alcohol. The Board also

noted that you acknowledged the page 11 entry and elected to submit a statement. In your statement, you argued that you did not commit the alleged misconduct. The Board, however, determined that the contested entry was issued and written according to the IRAM. Specifically, the entry provided written notification concerning your misconduct, specific recommendations for corrective action, where to seek assistance, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer signed the entry and determined that that your misconduct was a matter that formed an essential and permanent part of your military record, as it was his/her right to do.

The Board noted, too, that according to the ROM, an Article 32 hearing was held on 28 February 2019 to investigate the charges of Article 120c (intentionally exposed his genitalia), 128 (grabbing MSgt on the arm and waist), 133 (conduct unbecoming an officer), and 134 (drunk and disorderly conduct). The ROM noted that although the investigating officer (IO) determined there was sufficient evidence to support the charges, an objective analysis of the evidence revealed an absence of facts that would support a conviction, the IO recommended non-judicial (NJP) and that you be required to show cause.

On 5 January 2021, you were required appear before the BOI, the BOI noted that according to your testimony, you did not intentionally indecently expose yourself to the Master Sergeant. The BOI unanimously found that the preponderance of the evidence did not prove the allegations and recommended closing your case. On 29 April 2021, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) reviewed the available material, directed the closure of your case, found that your ROM met the definition of adverse material and determined that the adverse material would be included in your record.

Concerning your contention that the inclusion of the page 11 entry and ROM in your record are a violation of the IRAM because the BOI found that your allegations of misconduct was unsubstantiated, the Board determined that your attempt to conflate the BOI findings with the inclusion of adverse material in your record is misguided. According to the Department of Defense Instruction 1320.04, adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. The Board also determined that according to the ROM your misconduct was substantiated and documented in the command investigation. The Board further determined that BOIs are a separate and independent entity formed for the purpose of determining an officer's suitability for retention, thus the findings at the BOI do not invalidate your page 11 entry or ROM. According to U.S.C. § 1182, the Secretary of the military department concerned shall convene a BOI at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Accordingly, your CO was not bound by the BOI findings and the DC (M&RA) determined that your ROM was valid and constituted adverse material. As explained above, the Board found sufficient evidence to support the command's determination that you committed misconduct. You also indicated that you were diagnosed with a traumatic brain injury (TBI) on your application, the Board, however, noted that an appropriately

privileged medical provider determined that your TBI was not a contributing factor in the alleged misconduct. 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,

2/24/2022

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Executive Director

Signed by: █