

## **DEPARTMENT OF THE NAVY**

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

> Docket No: 7471-21 Ref: Signature Date



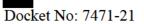
This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 March 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.

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 the 3 March 2020 Report of Misconduct (ROM) and all related adverse material. The Board considered your contentions that your Board of Inquiry (BOI) unanimously found no basis for the alleged misconduct and no evidence of misconduct. You also contend that the ROM was derived from an inconclusive Command Investigation (CI) and evidence that was not brought forward before the ROM was presented at the BOI. You acknowledged that while the BOI is for retention, the evidence and testimonies brought forward were dramatically contradictory from the ROM. As evidence, you furnished correspondence from a former peer.

The Board, however, determined that your ROM is valid and should remain in your record as filed. In this regard, the Board noted that the Commanding General,



submitted a ROM documenting your misconduct for entering the unit planning spaces and exposing your genitalia to another officer. The ROM noted specific facts that substantiated your misconduct and the CG, recommended that you be directed to show cause for retention. The Board also noted that you acknowledged receipt of the ROM and elected to submit a response to the ROM. In your response you noted the weakness of the evidence and requested consideration based on the totality of your record. The Board noted, too, that the BOI unanimously found that the preponderance of the evidence substantiated none of the reasons for separation for cause and recommended the closure of your case.

The Board also considered the evidence you furnished, however, the Board determined that your ROM was submitted and included in your record according to the Legal Support and Administration Manual. Pursuant to the Legal Support and Administration Manual, a ROM is required in all cases of misconduct where the first General Court Martial Convening Authority (GCMCA) in the chain of command determines that the officer committed the misconduct. The Board noted that the CG, as the first GCMCA in your chain of command found that you committed misconduct and the CG, determine that the CI sufficiently captured the details of the allegation and that the ROM satisfies the requirement of the Marine Corps Prohibited Activities and Conduct Manual to document the misconduct and directed the convening of your BOI.

Concerning your contention that the BOI found no misconduct, the Board noted that according to 10 U.S.C. § 1182, BOI's are convened for the sole purpose of making findings and recommendations as to whether an officer who is required to show cause for retention on active duty should be retained on active duty. The Board determined that the submission of your ROM and convening of your BOI are separate and distinct processes. The CG, determination that you committed misconduct and submission of your ROM are not bound by your BOI findings. 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.

