



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

Docket No. 1065-22
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 July 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 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, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

Before applying to this Board, you exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

On 11 March 2019, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) approved the recommendation of the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) for your involuntary retirement in the grade of Major and transfer to the Retired Reserve List awaiting pay at age 60.

On 11 March 2019, you were the subject of a command investigation into allegations of sexual harassment. Specifically, it was alleged that on or about 11 and 17 December 2018,

you made an obscene sexual gesture toward an employee indicating oral sex. The implication of the gesture was that she used sexual favors to get promoted at her previous job. She also alleged you touched her on the shoulder without her permission and searched her desk drawers for food. The Investigating Officer (IO) substantiated the allegations and recommended you receive an adverse counseling but that your ongoing involuntary retirement not be delayed.

You were involuntarily retired in the grade of Major on 30 April 2019 and transferred to the Retired Reserve List awaiting pay at age 60.

Commanding Officer (CO), [REDACTED], forwarded the 11 March 2019 investigation on 13 May 2019, concurring with the IO's analysis and recommendations. He stated your actions demonstrated a significant departure from the behavior and conduct expected of any Marine, especially an officer of your grade and experience. However, in light of your previously approved involuntary retirement, the CO recommended issuing a Report of Misconduct to appropriately document the misconduct and allow your retirement.

By his endorsement on 15 May 2019, Commander, [REDACTED] [REDACTED] concurred with the CO and supported his recommendation that you be issued a Report of Misconduct documenting the misconduct.

On 17 May 2019, Commander, [REDACTED] submitted a Report of Misconduct to the Commandant of the Marine Corps (CMC) via Commanding General, [REDACTED]. Noting you had been involuntarily retired on 30 April 2019 and transferred to the Retired Reserves, he did not recommend you be required to show cause for retention at a Board of Inquiry. Further, Commander, [REDACTED] recommended that all adverse material be included in your Official Military Personnel File (OMPF).

Per his Memorandum for the Record (MFR), the Office of the Staff Judge Advocate (SJA), [REDACTED], sent the Report of Misconduct to your recorded gmail address on 20 May 2019. After receiving no response, on 28 May 2019, the report was re-sent to the gmail address on file for you. Still no response was received. On 29 May 2019, the Office of the SJA sent the Report of Misconduct to the counsel that represented you in the 29 September 2017 Board of Inquiry (BOI). There was no reply to any of the emails. The 31 May 2019 MFR served in place of your acknowledged receipt of the Report of Misconduct.

Per a MFR from the [REDACTED] SJA, dated 25 June 2019, his office sent the Report to your gmail account on 29 March 2019 and to the legal counsel who represented you. There was no reply to the emails. Noting it had been difficult to contact you regarding the Report of Misconduct, the SJA stated the Report would be processed and included in your OMPF.

Per the supporting documents you submitted with your current request for relief, you did not see the email containing the Report of Misconduct until about 1 July 2019. You

acknowledged receipt and submitted a response via a 12 July 2019 email to the [REDACTED] SJA.

By his email of 15 July 2019, [REDACTED] SJA acknowledged receipt by his office of your “documents” and stated “the documents will be included as appropriate with your package.”

By memorandum of 21 January 2020, the [REDACTED] notified you of his determination that the Report of Misconduct, while adverse, did not warrant further processing. He directed the case to be closed and the adverse material included in your OMPF.

The Board carefully considered your request to remove the derogatory material regarding the alleged misconduct cited in the 17 May 2019 Report of Misconduct. If the Board denied your request, you further requested that your “Personal Response to Report of Misconduct,” dated 6 July 2019, be added to the adverse material in your OMPF since your statement was not previously included with the original materials submitted by Headquarters Marine Corps (HQMC). You contend the adverse material should be removed because HQMC did not allow you to see the evidence against you or face your accuser. Further, you contend HQMC did not determine if combat-related Post-Traumatic Stress Disorder (PTSD) was a factor. You also contend you should have been permitted to properly address the matter while still in uniform, particularly since ASN, and later this Board, cited the specific alleged misconduct in their decisions regarding a separate, unrelated matter. You deny the SJA’s statement that numerous attempts were made to contact you via phone, email, and legal representative and contend, that at a minimum, your statement should be included in your OMPF if the derogatory material is not removed.

Upon review and consideration of all the evidence of record and applicable references, the Board determined your request does not warrant relief. The Board concluded there was insufficient evidence to overcome the presumption of regularity that the Report of Misconduct was properly, without error or injustice, added to your OMPF after full consideration of the facts, circumstances, and PTSD diagnosis. Further, the Board, noting the [REDACTED] SJA’s email response that “the documents will be included as appropriate with your package,” determined there is insufficient evidence to overcome the presumption that the 6 July 2019 personal statement was routed with the Report of Misconduct package to the [REDACTED] and considered before a determination was made to not include the documents. Lastly, noting the CO’s determination that a preponderance of the evidence substantiated the misconduct and further considering your pending involuntary retirement, the Board determined it was not error or unjust for the matter to be closed without further administrative action more than eight months after your involuntary retirement. The Board concluded there was insufficient evidence of an error or injustice warranting your requested relief.

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,

8/4/2022

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Executive Director

Signed by: 