



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

■
Docket No: 2190-22

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 17 May 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 the titling of your name from the Naval Criminal Investigative Service (NCIS) report of investigation (ROI) and Department of Defense (DoD) databases. The Board considered your contentions that you fully cooperated with the NCIS investigation, the lack of credible evidence at the time of titling supports deletion of the ROI, and the investigation failed to establish that you knew or should have known that you were not permitted to remove the horizontal stabilator. You also contend that larceny refers to the wrongful taking with the intent to permanently deprive, your actions indicated that you believed you were not acting improperly, and you should not have been titled for a Uniform Code of Military Justice (UCMJ) violation. You argue that the *Manual for Courts-Martial* (MCM) requires more than proof of accidental or negligent taking of an item to prove larceny. The item was sitting on a crate next to a dumpster, and although you did not receive express permission to take the component, you were given the impression that you could take it home. You also argue that the ROI does not contain an arrest record or a conviction that would warrant the preservation of your name or be used at a later time for reference. You claim that the National Defense Authorization Act (NDAA) for fiscal year (FY) 2021, H.R. 6395 provides an update to the

provisions for the correction or expungement of the titling. You also claim that the information contained in the NCIS record has proven to be a tremendous barrier to employability.

The Board noted that during April 2019, NCIS was contacted by the Naval Air Station ██████████ ██████████ Base Security regarding the theft of an F/A-18 horizontal stabilator from the base. The horizontal stabilator was marked for destruction and valued at \$192,570. Through surveillance, the NCIS was able to trace the vehicle that transported the stabilator to your home. The investigation determined that you and two other Sailors took the stabilator and transported it to your residence.

Concerning your contention that there was the lack of credible evidence at the time of titling and the investigation failed to establish that you knew or should have known that you were not permitted to remove the horizontal stabilator, the Board noted that the NCIS investigation clearly establishes the fact that you removed the horizontal stabilator without permission. The Board also noted that you were informed to contact the supervisor for further inquiry. Though the report indicates your attempts to contact the supervisor, you ultimately did not speak to him and, thus, reasonably should have known that you did not have permission to remove the horizontal stabilator. Therefore, the Board determined that the NCIS investigation established there was credible evidence that you committed misconduct.

Concerning your contention that larceny refers to the wrongful taking with the intent to permanently deprive. The Board noted that Article 121, UCMJ, applies to any person subject to the UCMJ, “who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind— (1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or (2) with intent temporarily to deprive defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.” The Board determined that you wrongfully took the horizontal stabilator (military property), valued at approximately \$192,570 from a military base, with the intent to permanently or temporarily deprive the government of the property for your own use. The Board found no evidence that you intended to return the horizontal stabilator or that you had permission to remove the property, and you provided none. Based on this factor, the Board concluded your taking of the horizontal stabilator was wrongful and met the Article 121, UCMJ elements for larceny.

Concerning your contention that the ROI does not contain an arrest record or a conviction that would warrant the preservation of your name or be used at a later time for reference. The Board determined that an arrest record or conviction is not required to be titled or index into DoD databases.

The Board noted the NDAA FY 2021 policy and considered the facts related to probable cause that the offense occurred, the extent of corroborating evidence, and whether adverse administrative or disciplinary action was taken against you. Although no punitive or administrative action was taken against you, the Board determined that there was probable cause

and sufficient evidence existed that the offense for which your name was titled did occur and you committed the offense.

Moreover, DoD Instruction (DoDI) 5505.07 provides that, under the credible information standard, subjects of criminal investigations “will” be titled and indexed “as soon as the investigation determines there is credible information that the subject committed a criminal offense.” The Board determined that pursuant to the DoDI 5505.07, the NCIS investigating officials relied upon the totality of evidence obtained during the course of the investigation and deemed the information credible. Once you are the subject of an investigation (titled), your information will remain in the database (indexed), unless there is mistaken identity or it is determined that no credible information existed at the time of your titling and indexing. Moreover, the Board is not an investigative body, relies upon the presumption of regularity to support the official actions 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 further determined that the evidence you provided was 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,

6/6/2022

[REDACTED]