



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

█
Docket No: 2672-22
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 7 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.

On 19 August 2021, you underwent non-judicial punishment (NJP) and your commanding officer (CO) found you guilty of violating Article 92 of the Uniform Code of Military Justice (UCMJ) for wrongfully distributing an intimate video of another Marine between 17 April and 11 May 2020. You also received an Administrative Remarks Page 11 counseling entry on the same date due to receiving the NJP. On 20 October 2021, you underwent an administrative discharge board (ADB), which found no basis for separation.

The Board carefully considered your request to remove the unit punishment book (UPB) entry of 19 August 2021 documenting the NJP. You argue that the NJP should be removed because the ADB found that the preponderance of the evidence did not prove that you committed misconduct. You further contend the NJP is invalid due to inaccurate statements made at the NJP, specifically, that the complaining witness sent the video to multiple individuals after early May 2020. You contend that digital forensic research, which was discovered after the NJP, shows that the complaining witness actually sent the video to others in March 2020 and this fact

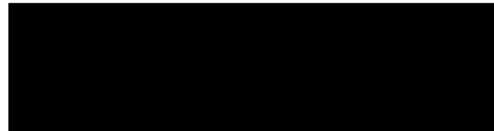
supports your claim that the Lance Corporal, to whom you were accused of sending, could have received it from someone other than you.

The Board noted that the requirement for a finding of guilt at NJP is that the CO determines by a preponderance of the evidence that the accused Marine committed the offense. The Board further noted that you had the opportunity to consult with an attorney prior to accepting the NJP, that you accepted NJP, and did not appeal it. Moreover, the Board found that the outcome of an ADB has no bearing on a commander's decision to impose NJP. Finally, the Board noted that your counsel submitted to the CO a request to set-aside the NJP based on the digital forensic research of September 2020. On 9 November 2021, after reviewing the research, the CO denied the request. Based on the foregoing factors, the Board concurred with the CO's determination that there was insufficient evidence to show an error or injustice exists with the 19 August 2021 NJP. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

7/25/2022

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Executive Director

Signed by: 