



"cleared of all legal implications". You also claim that the Battalion Commander and the two Commanding Generals in your chain of command all recommended against including any of the material in your Official Military Personnel File (OMPF). However, Manpower and Reserve Affairs provided no analysis as to why this material should be included in your OMPF, demonstrating that the decision was arbitrary and not entitled to any deference. You explained that a glass simply broke during a confusing incident during which you acted to protect two females from someone you viewed to be a threat, they also confirmed him as a threat, and no witnesses stated that you assaulted anyone. At worst this was a misunderstanding, based on a difficult situation, in which you literally followed the specific steps of how to intervene according to the Bystander Intervention training. You further claim that your verbal outburst was, and still is, uncharacteristic and was, in fact, consistent with your drink being spiked.

The Board noted that you were arrested and charged with simple assault on 10 February 2018. On 6 March 2018, the Superior Court of the █ Criminal Division noted that the disposition of your case was "Nolle-Diversion/Diversion Successfully Completed." The Board also noted that Nolle Diversion is applied when the Court "has agreed that it will no longer pursue prosecution in a case because the defendant has complied with the conditions of his/her release as ordered by the Court." The Board noted, too, that your commanding officer (CO) determined that your "lapse in judgment can be addressed via administrative measures" and recommended against the requirement to show cause. Commander, Marine Corps Installations National Capital Region concurred with your CO that your lapse in judgment could be addressed via administrative measure and recommended that adverse matters be included in your OMPF. Further, Commander, Marine Corps Installations Command (MCIC) determined that the reporting of dispositions for misconduct is required even when the officer participates in a court sanctioned diversionary program that permits the subsequent dismissal of the charge. Commander, MCIC also determined that a ROM most appropriately characterizes the circumstances of this case and, given the totality of the circumstances in the case and recommendations of your chain of command, he recommended that your case be closed and the material related to this incident not be filed in your OMPF. However, as the Show Cause Authority for the Marine Corps, the Deputy Commandant, Manpower and Reserve Affairs (DC, M&RA) reviewed the CG, MCIC's endorsement and determined that the information was adverse, directed the closure of your case, and further directed the adverse material concerning the matter be included in your OMPF.

Concerning your contention that you were not found guilty, the local prosecutors determined that your actions were not worthy of prosecution, and your simple assault charge was immediately dropped, the Board noted that no further prosecution was pursued because you completed a diversion program that complied with the conditions as ordered by the Court. The Board determined that the civil court's Nolle Diversion ruling did not constitute an exoneration of your misconduct. The Board also noted that according to the Legal Support Administration Manual (LSAM), a report must be generated in all cases where the General Court Martial Convening Authority (GCMCA) determines that the officer committed misconduct; the report serves to provide a complete record of the misconduct and its disposition for inclusion in the officer's OMPF; and only the DC, M&RA may close the case if an officer is determined to have committed misconduct. The Board also determined your chain of command clearly and repeatedly considered your "lapse in judgement" as misconduct and that your misconduct was

supported by sufficient evidence and appropriately documented in a ROM as required by the LSAM. Based on the evidence, the Board determined that the inclusion of the adverse material into your record was not a violation of the PES Manual or the IRAM.

Regarding your reference to previous cases where the Board has removed adverse material, the Board determined that you were not similarly situated as the Petitioners that were granted relief based upon exoneration or unsubstantiated allegations. As previously explained, your completion of a diversion program was not an exoneration of the simple assault charge and your misconduct was not deemed unsubstantiated.

Concerning your contention that the DC, M&RA did not provide justification for the inclusion of your adverse material. The Board determined that the DC, M&RA is not required to provide a detailed analysis or justification for his determination that adverse material should be included in an officer's OMPF. The Board also determined that the DC, M&RA's statement that he reviewed the material is sufficient and as the Show Cause Authority for the Marine Corps, he acted within his discretionary authority when determining that the adverse material would be included in your OMPF and his decision was neither arbitrary or capricious based on the information contained in the ROM. Regarding your claim that you drink was spiked, the Board found no evidence to support your allegation and found your claim in conflict with your assertion that you were acting willing and knowingly in accordance with your bystander intervention training. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the derogatory material. Accordingly, the Board found insufficient evidence of error or injustice to 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,

6/29/2022

