



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



Docket No: 3932-22

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 8 November 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, as well as the 14 June 2022 and 21 July 2022 advisory opinions (AOs) furnished by the Licensed Clinical Psychologist, the 2 August 2022 AO furnished by the Military Personnel Law Branch (JPL), and your responses to the AOs.

The Board carefully considered your request to remove the 10 March 2020 and 30 June 2021 unit punishment books (UPBs)/non-judicial punishments (NJPs), associated Administrative Remarks 6105 (page 11) entries and your 19 July 2021 page 11 entry. You also request restoration of your pay grade to private first class (PFC/E-2). The Board considered your contentions that the 10 March 2020 NJP was unjust compared to the lack of punishment other Marines received for underage drinking violations and you were unjustly punished for being a female in a predominantly male occupational field. You also contend that the 30 June 2021 NJP was erroneous, therefore, the page 11 entry documenting the NJP and the 19 July 2021 page 11 entry for failing to check-in for restriction are also unjust. You claim that you were unfairly targeted in an investigation into an alleged affair with a married Marine, the other Marine was legally separated, and his wife and neighbors repeatedly harassed you and implored the command to issue a Military Protective Order (MPO). You assert MARADMIN 216/20 indicates that MPOs should not be issued for the purpose of keeping the suspect and victim/witness separate. The purpose of issuing a MPO is to avoid placing individuals in

imminent danger, which was not relevant to your situation. You also claim that there was a Preliminary Inquiry (PI) that included grainy photos of you breaking the MPO, and you only accepted NJP to avoid aggravating your mental health, and your command did not properly consider your diagnosed mental health conditions which influenced your decisions to accept NJP. You also assert that during July 2021 you were on light duty recovering from surgery and should have been excused from checking in. Further, you contend that your rebuttal to the formal counseling was not submitted by your command. As evidence, you furnished a personal statement, medical documents, and the PI.

The Board, however, substantially concurred with the AOs that your NJPs are valid. In this regard, the Board noted that you received NJP, on 10 March 2020, for violating Uniform Code of Military Justice (UCMJ) Articles 86 and 92 by failing to report to your appointed place of duty and for being in the barracks room of a male student. You also received NJP, on 30 June 2021, for violating Article 92, UCMJ by violating the MPO. You were awarded reduction in grade to E-2, restriction and extra duties. Again on 22 September 2021, you received NJP for violating Article 91, UCMJ by sending a text message containing disrespectful language to the company First Sergeant. You were awarded reduction to E-1, restriction, and extra duty. The Board also noted that in processing of each NJP proceeding, you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, you acknowledged your right to appeal, and you elected not to appeal your Commanding Officer's (CO's) findings of guilt at NJP. The Board determined that your NJPs were processed pursuant to the *Manual for Courts-Martial* (2019 ed.) (MCM) and your reductions in grade were an authorized punishment according to the MCM. The Board also determined that you had the opportunity to present facts to mitigate your misconduct, however, as the fact-finder at NJP, your CO considered the available facts and circumstances of your cases, and render decisions based upon a preponderance of the evidence and his/her discretionary authority.

The Board also noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued 6105 page 11 entries documenting your NJPs and on 19 July 2021 you were issued a page 11 entry counseling you for failing to check in with the Battalion Officer of the Day at 0700. You acknowledged each entry and only elected to submit a statement for the 10 March 2020 page 11 entry. The Board determined that the contested entries were written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and the entries afforded you the opportunity to submit a rebuttal. Moreover, your CO signed each entry, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do.

Concerning your contention that the MPO was issued improperly, the Board substantially concurred with the AO that a MPO may be issued to quelling a disturbance. Although, a no contact order would have been more appropriate, the Board determined your command was within its discretion to issue the MPO and there was no error in its issuance. The Board also noted that you acknowledge the MPO and there was sufficient evidence that you violated the order not to have any contact with the married Marine.

With respect to your contention that you were on light duty and should have been excused from the check-in during restriction. The Board noted that you were on light duty due to abdominal surgery. The Board also noted that you reported for all previous and subsequent check-in periods and determined that your light duty status was not a basis to be excused from check-in during your period of restriction. Moreover, the Board found no evidence that you were physically unable to check-in and you provided none. Concerning the submission of your rebuttal to the 19 July 2021 page 11 entry, the Board found no evidence of your purported submission to your staff sergeant and you provided none. The Board determined that your contention lacks merit and is not a basis to invalidate the page 11 entry.

Regarding your mental health condition, the Board substantially concurred with the AO furnished by the Licensed Clinical Psychologist that there is insufficient evidence that all of your misconduct could be attributed to Post Traumatic Stress Disorder (PTSD) or another mental health condition. In this regard, the Board noted that you were diagnosed with PTSD and Major Depressive Disorder (MDD), as well as other mental health conditions that may be attributed to military service. The Board, however, found no nexus between your mental health conditions and your misconduct. Moreover, the Board relies on a 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 found your evidence insufficient to overcome this presumption. After careful consideration of the totality of the evidence, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

11/28/2022

