



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

█
Docket No: 4333-22

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 19 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your 8 June 2021 Administrative Remarks (page 11) 6105 counseling entry and 14 June 2021 rebuttal statement. The Board considered your contentions that the page 11 entry states that you violated Uniform Code of Military Justice (UCMJ) Articles 92 and 120, the page 11 was issued after the Naval Criminal Investigative Service (NCIS) investigation found no evidence to refer charges against you for abusive sexual contact, and a Command Investigation did not prove that you committed an act of abusive sexual contact. You also contend that your administrative separation (ADSEP) board found that based upon a preponderance of evidence the allegation of abusive sexual contact had no basis. You assert that when the page 11 entry was added to your record, it still stated that you violated Article 120, and having a record of this offense in your official file, after there was no

basis found to the allegation, would be detrimental to your future service. You also assert that you did not commit an act of abusive sexual contact as described in the counseling and the finding of the ADSEP board only serves to solidify this point.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry counseling you for violating Article 92, UCMJ on divers occasions from about May 2020 to about February 2021, and you violated Article 120 (Abusive Sexual Contact), UCMJ by striking the buttocks of another Marine with a paddle with the intent to abuse, humiliate, or degrade him. The Board also noted that you acknowledged the entry and elected to submit a rebuttal statement. The Board determined that your contested page 11 entry was issued and written according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry and determined that your misconduct was a matter forming an essential and permanent part of your military record, as it was his/her right to do.

The Board noted that your CO directed a command investigation into the facts and circumstances surrounding the alleged Marine Corps Prohibited Activities and Conduct Prevention and Response (PAC) Policy violations. Based upon the findings, the IO found that your interactions met the definition of sexual harassment. Specifically, you committed acts of sexual harassment towards Marines multiple time over the course of nine months, multiple individuals witnessed many of the acts, and you committed these acts primarily, if not exclusively, only when Marines of lower rank were present. The IO also found that you may have committed sexual assault against a Marine and your actions were particularly egregious because of your position as a unit Sexual Assault Prevention and Response (SAPR) Coordinator. The Board also noted that according to the *Manual for Courts-Martial* (MCM) (2019 ed.), the term “sexual contact” means touching, or causing another person to touch, either directly or through the clothing, . . . , or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person . . . Touching may be accomplished by any part of the body or an object.” The Board determined that based upon the MCM and command investigation, your CO had sufficient evidence to determine that your page 11 entry was warranted. 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.

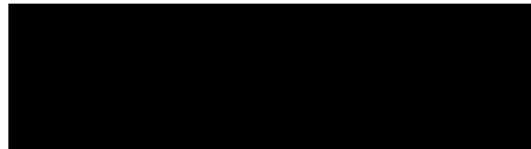
Concerning your ADSEP board, the Board noted that the ADSEP board unanimously found that the preponderance of evidence supports that you violated Article 92, specifically, you violated paragraph 0105 (Harassment (To Include Sexual Harassment)) of the PAC Policy. The Board determined that an ADSEP board proceedings is a separate process that is administrative in nature with the fundamental purpose of determining your suitability to serve. The Board also determined that the findings of your ADSEP board do not invalidate your CO’s determination that your page 11 was warranted or that you violated Article 120. The Board further determined that it does not mean a material error or injustice occurred because the result at ADSEP proceeding was different from the CO’s determination. Therefore, based upon the available evidence, the Board concluded that there is no probable material error, substantive inaccuracy, or

injustice with the page 11 entry. 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,

7/29/2022



Deputy Director

Signed by: ██████████