



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

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Docket No. 5215-22
Ref: Signature Date

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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 29 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 October 2022 advisory opinions (AO) furnished by the Marine Corps, Military Personnel Law Branch and your response to the AO.

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 the 8 October 2021, summary court martial and associated fitness reports for the reporting periods 1 September 2020 to 3 June 2021 and 4 June 2021 to 18 October 2021. The Board considered your contention that your lawyers advised you to take the plea deal because it would be a sure route to retirement. You claim that you maintained your innocence, but signed the plea deal because the command promised to grant an extension to ensure you were eligible for retirement. You also claim that the Marine that made the accusation came forward in a video and admitted that his statement was false and the Marine was bribed. You assert that you asked the Convening Authority (CA) why the charges were referred to a court martial, and you were told that it was because you wrote a rebuttal to the

6105 page 11 entry. You further claim that you submitted complaint to the Command Inspector General (CIG) but did not receive a response.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 page 11 entry notifying you that you are being relieved of your official duties as the Battalion Training Chief based upon a Preliminary Inquiry (PI) where you compromised your integrity while serving as the investigating officer, and separate from the fore mentioned issue, five Marines stated that you willfully withheld information of a Driving Under the Influence (DUI) violation committed by a junior Marine. The Board also noted that the Commanding Officer (CO), referred charges for trial by special court-martial against you for violations of the Uniform Code of Military Justice (UCMJ), Article 92: Specification 1 (Dereliction in the Performance of Duties – Willful) and Specification 2 (Dereliction in the Performance of Duties – Through Neglect). You agreed to plead guilty to dereliction in the performance of duties for willfully failing to report a DUI violation committed by a Marine in your unit. You signed the Memorandum of Plea Agreement, in which you agreed to enter a plea of guilty to a single specification of violating Article 92, UCMJ at a summary court-martial. The summary court martial Officer found you guilty and awarded reduction in rank to Staff Sergeant (SSgt/E-6). You submitted a letter to the CA requesting clemency consideration, your request was denied, and the adjudicated sentence was approved and ordered. The Board further noted to that the summary court martial review officer determined that your sentence as adjudged and approved was legal.

Regarding your video evidence, the Board found it insufficient to support a basis to grant relief. The Board determined that you voluntarily admitted your guilt at summary court-martial, attested to your understanding of the plea agreement, and you acknowledged entering into the agreement freely and voluntarily. The Board found no evidence of corrosion or bribery and you provided none. 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.

You also indicate in your application that you are the victim of reprisal. The Board noted that your complaint was investigated, the investigation was not substantiated, and your case was closed during September 2021. The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 U.S.C. § 1034. 10 U.S.C. § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 U.S.C. § 1034 (c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone

number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

Concerning your request to remove your fitness report for fitness reports for the reporting periods 1 September 2020 to 3 June 2021 and 4 June 2021 to 18 October 2021, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual. 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,

12/8/2022

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Deputy Director

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