



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

██████████
Docket No. 5386-22
Ref: Signature Date

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Dear ██████████

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 17 January 2023. 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies as well as the 20 October 2022 Advisory Opinion (AO) provided by the Headquarters Marine Corps Military Personnel Law Branch (JPL), as well as your 19 December 2022 response in rebuttal.

The Board carefully considered your request to the 27 January 2021 Board of Inquiry (BOI) Report and any associated records from your official military personnel file (OMPF). The Board considered your contentions that the BOI Report should be removed for the following reasons: (1) the Report inaccurately and unjustly states "facts" contrary to actual facts in evidence at the BOI; (2) the Report is not in compliance with policies and procedures due to a failure to provide proper notice in violation of SECNAV Instruction 1920.6D, which hindered your ability to properly prepare for the hearing; (3) the findings of the BOI as well as the BOI Report are ambiguous and contrary to policy and procedure, and it is unknown what law(s) the BOI members applied, and thus impossible to review the legal sufficiency of their application of the law; (4) lack of preponderance of the evidence, rendering the findings you violated Article 128b and Article 133, Uniform Code of Military Justice inaccurate; (5) placement of the BOI Report in your OMPF is substantially unjust due to the cumulative effect of the various errors and inaccuracies. Your response in rebuttal to the AO provided clarification regarding the events

surrounding the allegations of domestic violence reported on 15 June 2020, and additional background information. You also assert material error and injustice because the AO relies upon an egregious error in stating facts, and that it should be afforded little weight in the Board's analysis.

The Board noted that on 15 June 2020, your wife reported to Security Forces aboard [REDACTED] AFB that you physically assaulted her during an argument at your on-based residence the night prior. You were questioned by investigators and admitted to having a physical altercation with your spouse. Specifically, you admitted to pressing your finger into your wife's forehead, slamming her into the refrigerator, sliding her across the kitchen counter until she hit the stove, and stating "you're lucking the fucking stove is not on." You also admitted to telling your wife in the presence of your son that "if you leave there is nothing for me, I'll blow my brains out." Finally, the Board noted that on 8 July 2020, your wife recanted her initial statement through her victim legal counsel saying that she attributed the acts you did to her to things that actually occurred between her father and mother when she was a child.

The Board noted that on 13 January 2021 the BOI found a preponderance of the evidence substantiated the allegations for violation of Articles 128b (Domestic Violence) and 133 (Conduct Unbecoming) of the Uniform Code of Military Justice. The BOI also recommended your retention in the Marine Corps. On 27 January 2021, the Senior Member documented the BOI's findings in a report of BOI. The Minority report of 13 July 2021 disagreed with the Majority decision regarding the charge for Article 128b based upon your spouse recanting of her initial claims.

The Board, however, substantially concurred with the AO. In this regard, the AO determined that none of the arguments you provided, in part or as a whole, support the removal of the BOI Report from your OMPF. The Board noted that you were duly notified of the show cause proceedings based on both substandard performance of duty and misconduct or moral or professional dereliction. The Board noted that the BOI notification referenced the Report of No Misconduct dated 23 October 2020 which contained a detailed description of the incident as well as the enclosed Naval Criminal Investigative Service Report of Investigation and statements from your wife.

Regarding your contention that the BOI inaccurately and unjustly states "facts" contrary to actual facts in evidence at the BOI, the Board noted that the purpose of the BOI is to ensure you have an opportunity to present your case, and that it is not a court-martial, therefore the rules of evidence and other judicial proceedings do not apply. Further, the Board noted that in accordance with enclosure (11) of the SECNAV Instruction 1920.6D, you had the right to submit a statement in rebuttal to the BOI's findings to be submitted to the Special Convening Authority for termination of processing or review and endorsement before forwarding to the Secretary of the Navy for final determination. In this case, the Board noted in your statement you merely requested that matters not be included in your OMPF.

Finally, the Board noted that the BOI considered and weighed all contradictory statements and evidence, but ultimately determined by majority vote that a preponderance of the evidence supported the specified bases. Furthermore, the Board noted that according to 10 U.S.C. § 1182,

the scope of a BOI is not judicial, but to form findings and recommendations that provide a basis for separation for cause, or retirement in the current grade or a lesser grade, and to present matters favorable to their case on the issues of separation and characterization of service. The Board determined that the BOI did not determine that you were “not guilty” of misconduct, but rather, that the preponderance of evidence did not support your misconduct as a basis for separation from the Marine Corps.

Finally, 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. 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,

2/6/2023

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Deputy Director

Signed by: 