



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

██████████
Docket No. 5855-22
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three member panel of the Board, sitting in executive session, considered your application on 16 February 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 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 22 September 2022 advisory opinion (AO) provided to the Board by Headquarters Marine Corps Military Personnel Law Branch (JPL) and the 3 January 2023 AO provided to the Board by a Licensed Clinical Psychologist. The JPL AO was provided to you on 12 August 2022, and the Licensed Clinical Psychologist AO was provided to you on 3 January 2023. Although you were given 30 days in which to submit a response to each AO, you chose not to do so.

In August 2016, you were the subject of a command investigation for engaging in an inappropriate relationship with a foreign national. On 30 September 2016, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 107 of the Uniform Code of Military Justice (UCMJ), by making false statements to the command investigator. You were subsequently administratively counseled and given an adverse fitness report as a result of the inappropriate relationship and NJP.

The Board carefully considered your request to remove the unit punishment book (UPB) entry documenting your 30 September 2016 NJP, 6105 counseling entry of 30 September 2016, and the adverse fitness report covering the period 22 January 2016 to 30 September 2016. You argue

the adverse documentation should be removed because the finding that you violated Article 107, UCMJ was erroneous. You assert that you made no false written statement or any statement with an intent to deceive. You further contend that the statement you made did not violate Article 107, as your statements did not affect military functions and did not have any effect on your ability to perform your duties. Finally, you contend that the adverse documentation should be removed because you were undergoing a mental health crisis that was recently diagnosed.

The Board noted that you voluntarily accepted NJP and you chose not to appeal the imposition of NJP. The Board further noted that you did not provide any evidence, which would rebut the presumption of regularity demonstrating that your statements to the investigating officer were truthful. Consequently, the Board determined that if you wanted to challenge the precise language of the specification you were charged with, you could have exercised your right to refuse NJP and demand trial by court-martial.

Moreover, the Board concurred with the JPL AO there is evidence in the record, specifically in the adverse fitness report, that your statement to the investigating officer impacted your military duties, as the reviewing officer noted that he could not trust you with an account due to your questionable integrity. In addition, the Board concurred with the Licensed Psychologist's AO that you were diagnosed with a mental health condition five years after the misconduct that resulted in NJP and the medical records do not provide a nexus between your mental health treatment and the misconduct.

Consequently, the Board determined that the evidence provided does not support your contention that your misconduct could be attributed to a mental health condition and does not overcome the presumption of regularity to prove that the adverse actions taken in your case were improper. The Board thus concluded that the UPB entry, Page 11 counseling entries, and adverse fitness report do not constitute material error or injustice warranting removal from your record. 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,

3/11/2023



Executive Director

