



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

█  
Docket No: 6134-22  
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.

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 September 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 20 April 2017 unit punishment book (UPB)/non-judicial punishment (NJP) and 25 April 2017 Administrative Remarks (page 11) entries. The Board considered your contention that the NJP and page 11 entries were supplemental administrative actions/punishment for the same incident. You also contend that there was undue command influence, the undue command influence resulted in an Equal Opportunity (EO) complaint and investigation which resulted in your NJP, and the Commanding Officer (CO), as the adjudicating authority, was bias. You claim that you were previously counseled on 14 December 2016, everyone involved concurred with the issuance of the initial page 11 entry, the victim was disappointed, but was satisfied with the page 11 entry until other officers recommended that the victim file a formal EO complaint so that you would receive an

escalated form of punishment. You also claim that your chain of command and the investigating officer (IO) recommended the page 11 entry, however, the new CO elected to impose NJP. You assert that the EO case should not have been accepted by the Division Commander since administrative action was already taken. You also assert that the CO unjustly ordered an investigation, made a decision contrary to the recommendations of other parties, and made bias statements in his endorsement and references to your rebuttal.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry on 14 December 2016, counseling you for poor judgment, lack of maturity, unprofessional behavior, communicating indecent language, and conduct prejudicial to good order and discipline in violation of Article 134, UCMJ. Specifically, for taking a picture of a female Navy Lieutenant (LT) performing an exercise and posting the picture on Facebook with the caption “When you DTF but tryna be subtle.” The Board also noted that you acknowledged the entry and elected to submit a statement. In your statement, you admitted fault for hurting another military members feelings, you have not shown a trend of being unprofessional, immature, or displaying traits unbecoming of a Marine, you did not intend to embarrass the LT nor would you have posted the picture if you had known it would have brought her discomfort; however, her features could not be distinguished in the picture.

The Board determined that your contentions lack merit. The Board noted that the LT filed an EO complaint in accordance with the Marine Corps Equal Opportunity Manual (EOM). The EOM grants all service members the right to file an EO complaint and prohibits command personnel from ordering a specific method to resolve a complaint. The EOM also directs COs and commanders to promptly conduct an investigation once a formal complaint is received and to take appropriate action. Therefore, the EOM required your CO to conduct an investigation, however, upon completion of the investigation, the CO was not bound by the recommendations of the IO. Your CO had the discretionary authority to the take action that he/she deems appropriate based upon the preponderance of evidence. In this case, your CO did not concur with the IO’s recommendations in several particulars and duly justified the basis for his disagreement. The Board also determined that your NJP for violating Articles 92 (Failure to Obey a Lawful Order) and 134 (General Article), Uniform Code of Military Justice (UCMJ) was valid and conducted pursuant to the *Manual for Courts-Martial* (2016 ed.). The Board also noted that you acknowledged your Article 31, UCMJ Rights, certified that you were afforded the opportunity to consult with a military lawyer, you acknowledged your right to appeal the NJP and did not appeal your CO’s finding of guilt.

Concerning your 25 April 2017, page 11 entry counseling you regarding your NJP for violating UCMJ Articles 92 and 134 and your page 11 entry not recommending you for promotion for six months, the Board noted that you acknowledged both page 11 entries and you elected not to submit a statement. The Board determined that the contested entries are valid and they were written and issued according to applicable regulations. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the UPB/NJP or page 11 entries 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,

9/27/2022  
[REDACTED]  
Executive Director  
Signed by: [REDACTED]