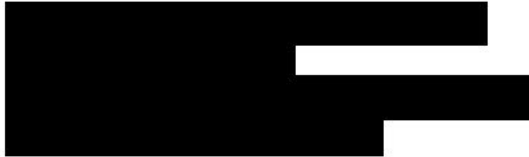




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490



Docket No. 6420-22
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.

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 18 April 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 31 January 2023 advisory opinion (AO) provided by the Marine Corps Personnel Law Branch (JPL) and your response to the AO.

The Board carefully considered your request for an active duty retirement in the grade of Lieutenant Colonel (LtCol/O-5) effective 30 November 2019. You also request to change the narrative reason for separation to reflect completion of required active service and clarification regarding your eligibility for an active duty retirement based on your DD 214. The Board considered your contentions that the command failed to recognize your total time in service; both reserve (21 years) and active duty (18 years), and the Board of Inquiry (BOI) notification was deficient because it was silent on the fact that the members had to make a recommendation on your retirement grade, should they decide to involuntarily separate you from the Marine Corps. You also contend that the BOI members should have recommended your retention on active duty if they believed you served honorably throughout your career, even during your relationship with another woman. You assert that the decision to retire you in the lesser grade of major (Maj/O-4) should be overturned because the BOI retirement grade recommendation was contradictory to the

initial BOI's determination of separation with an Honorable characterization of service. You also argue that the BOI retirement recommendation is invalid because of undue command influence. Specifically, Commander, U.S. Marine Corps Forces [REDACTED] attempted to remove your Special Operations Primary Military Occupational Specialty (PMOS) and security clearance, and there were fewer witnesses willing to testify at your second BOI, compared to the first BOI. As evidence, you furnished an article stating that the [REDACTED] was rumored to be under investigation for unlawful command influence during an unrelated case and for unethical real estate practices. You claim that the request to remove your PMOS and clearance gave the appearance of being disingenuous and vindictive, and it was an attempt at excessive punitive action through an inappropriate venue. You also argue that the request to remove your PMOS was purportedly based on your misconduct however, the non-judicial punishment (NJP) that occurred more than one-year prior, and the original BOI was conducted ten-months prior. Therefore, if the basis was really about your misconduct, it could and should have been submitted following the NJP or following the original BOI. You also claim that you may have enough active duty years to qualify for an active-duty retirement, and it is unjust for your narrative reason for separation to state 'Unacceptable Conduct'.


In response to the AO, you noted that you and your spouse were estranged, living in different locations, your marriage was in turmoil from the beginning and you were officially divorced during April 2019. You also argue that the relationship was sporadic, collectively around three years during times when you were separated from your spouse. You further argue that the AO failed to address that the allegation for Article 80 was withdrawn, some of the side effects of post-traumatic stress disorder (PTSD) includes impulsivity and reckless or self-destructive behaviors, there is no evidence that you used your position to deceive anyone, and you served honorably in the grade of LtCol.

The Board noted that you were married during 2009 and was divorced during 2019. However, between November 2011 and February 2018, while married, you engaged in a long-term relationship with another woman. In February 2018, the other woman discovered that you were already married and filed a complaint with the Command Inspector General (CIG). The Board also noted that you received non-judicial punishment (NJP) for violating Articles 133 and 134, Uniform Code of Military Justice (UCMJ), you pleaded guilty to both violations, the Commanding General found you guilty at NJP, awarded a punitive letter of reprimand (PLOR), and forfeiture of pay. The Board also noted that [REDACTED] issued you a counseling entry for violating Articles 133 and 134, UCMJ, you acknowledged the entry, and elected not to submit a statement. The Board acknowledged that the violation of Article 80 was withdrawn, however, the Board determined that the withdrawal of the charge does not lessen severity of your misconduct or significance of your guilty plea and findings of guilt for Article 133 and 134, UCMJ.

Concerning the BOI notification and findings, the Board substantially concurred with the AO. In this regard, the Board noted that the BOI unanimously found that the preponderance of evidence supported the basis for separation and recommended your separation from active duty with an Honorable characterization of service. The Board also noted that [REDACTED] a second BOI, with the same members of the first BOI, to provide a retirement grade determination. According to the Judge Advocate General Instruction (JAGINST), you had the right to be given

notice of the BOI and sufficient information to respond to the allegations. The Board noted that you received and acknowledged the BOI notice on 11 June 2018, and you also received the 7 June 2018 correspondence from Commander, U.S. Marine Corps Forces Command that informed you the reasons for separation to be considered were substandard performance of duty, misconduct, and moral or professional dereliction. The Board thus agreed with the AO that you were afforded all due process rights according to regulations and the alleged notification error was not material. The Board noted that the JAGINST authorized the convening authority to reassemble the BOI members if he/she determined it was necessary to correct an omission. You received notification that the BOI would be reconvened for retirement grade consideration, and you were afforded all of your due process rights associated with the inquiry. Based on the foregoing, the Board found insufficient evidence of error or injustice with the reconvening of the BOI for the purpose of determining your retirement grade.

Concerning your characterization of service and retirement grade determination, the Board substantially concurred with the AO that your characterization of service and grade determination are not contradictory. According to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), “an honorable characterization of service is warranted in cases where a Marine’s service is otherwise so meritorious that any other characterization would clearly be inappropriate.” In addition, “if a Marine is being separated as a result of adverse conduct, unsatisfactory performance, or is requesting separation in lieu of court-martial, an honorable characterization is appropriate only if the Marine’s service is otherwise so meritorious that any other characterization would clearly be inappropriate.” The Board determined that the BOI’s recommendation and the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) decision to approve an Honorable characterization of service, and separation code of SNC1, Mandatory Retirement Required by Law (Unacceptable Conduct) was authorized and appropriate given your otherwise meritorious service. The standards used to determine your characterization of service and your retirement grade are not the same. The Board therefore determined it was not a material error for the BOI or ASN (M&RA) to consider the totality of your service record when granting you an Honorable characterization of service. Conversely, the Board considered that according to 10 U.S.C. Section 1370 a commissioned officer “shall be retired in the highest grade in which such officer is determined to have served on active duty satisfactorily.” In reviewing your record, the Board found that ASN M&RA reviewed your claims of error regarding the BOI, your evidence regarding satisfactory service in the grade of LtCol, and weighed that against your misconduct. The Board also determined that ASN (M&RA) acted properly and within his discretionary authority when concluding that you last served satisfactorily as a major. In making this finding, the Board noted your admission to misconduct while serving in the grade of LtCol, plea of guilty at NJP, and that the BOI unanimously substantiated the misconduct. Accordingly, the Board found no error or injustice in the determination that Maj was the highest grade in which you served satisfactorily.

Concerning your allegations of undue influence, the Board determined that it was within the Commander’s authority to request revocation of your PMOS and security clearance based on your documented misconduct. The Board found your evidence insufficient that the  exercised unlawful command influence or acted contrary to regulations when requesting to remove your PMOS and security clearance. Concerning your consideration for an active duty retirement, the Board determined that an official statement of service is the basis for determining retirement eligibility. According to your statement of service, the Board noted that you served 19 years, 11


months, and 15 days of active service. Moreover, based upon the statement of service and your admission that you were short of having enough service for an active duty retirement, the Board determined that you did not have sufficient service to be eligible for an active duty retirement.

The Board noted your claim of PTSD, however, according to a qualified medical provider, while your PTSD likely impacted your decision-making and behavior, it was not the most prominent factor in causing the misconduct. Accordingly, the Board determined that your PTSD was not the cause of your misconduct. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting granting you the relief you requested. 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,

5/1/2023


Executive Director
