



**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: 6674-22  
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 3 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.

On 7 April 2021, a lieutenant colonel stated that he saw you masturbating in your car in the parking lot of the Provost Marshal's Office (PMO). On 11 January 2022, the Commanding General (CG), █ Marine Logistics Group (MLG) notified you of his intent to impose non-judicial punishment (NJP) for violating Article 133 (Conduct Unbecoming of an Officer and Gentleman) of the Uniform Code of Military Justice (UCMJ), for exposing your penis in a parked car outside PMO. On 17 January 2022, the Commandant of the Marine Corps (CMC) notified you that your promotion to Chief Warrant Officer (CWO) 3 was being withheld so that the Secretary of the Navy (SECNAV) could determine whether you were mentally, physically, morally, and professionally qualified for promotion. On 18 January 2022, your attorney wrote a letter to the CG, MLG stating that you take responsibility for the act, that you did expose your penis in the car due to genital pain. Your counsel stated that you had surgery in January 2021 for a herniated disk and, that on the afternoon of 7 April 2021, you attended a physical therapy session which aggravated your genital area. Counsel further proffered that you went to the car to adjust yourself but that you should have picked a better location.

On 31 January 2022, you plead guilty at NJP for violating Article 133, UCMJ. CG, MLG imposed a punishment of a punitive letter of reprimand (PLOR) and forfeiture of pay and

recommended that you be required to show cause for retention. On 4 March 2022, the CG [REDACTED] Marine Expeditionary Force (MEF) determined that there was sufficient information to refer the case to a Board of Inquiry (BOI) based on violation of Articles 133 and 134 (Indecent Conduct) of the UCMJ. On 16 March 2022, you underwent a BOI, which found that the preponderance of the evidence did not substantiate the reasons for separation and recommended to close the case. On 18 August 2022, the CMC closed the case and directed that adverse material be placed in your official military personnel file (OMPF).

The Board carefully considered your request to remove the adverse documentation to include the Report of NJP and PLOR from your OMPF. You argue the adverse documentation should be removed because the BOI did not substantiate the allegations and recommended retention in the United States Marine Corps.

The Board noted that the command properly notified you of the charge against you, the potential punishment, and the right to refuse NJP. You subsequently accepted NJP and plead guilty to the charge. The Board further noted that the command properly afforded you your right to present evidence at the NJP and to appeal that decision. You chose not to appeal the NJP. In addition, the Board noted that the CG, MLG reviewed the same evidence that you presented the BOI. The Board also took into account that you provided no evidence that your sentence was erroneous or unjust as the sentence imposed was within the legal limits. Finally, the Board noted that that NJP and BOI processes are separate and independent; the purpose of a BOI is to recommend whether an officer should be separated from the U.S. Marine Corps, and if so, the appropriate characterization of service. Although the BOI did not find sufficient evidence to warrant a separation from the Marine Corps, that does not impact the validity of the NJP findings.

Based on these factors, the Board determined that the evidence provided does not overcome the presumption of regularity to prove that the actions taken in your case, to impose NJP and to award a PLOR, were erroneous or unjust. The Board thus concluded that the adverse documentation does 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,

11/18/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]