



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

██████████
Docket No. 7191-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 10 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 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 November 2022 Advisory Opinion (AO) provided by the Headquarters Marine Corps Personnel Law Branch (JPL), and your response to the AO.

The Board carefully considered your request to remove your 8 February 2021 Administrative Remarks (page 11) entry, your 12 April 2021 Administrative Remarks 6105 (page 11) entry, 12 April 2021 page 11 entry, and the associated rebuttal statement. As evidence, you furnished a letter from your current commanding officer (CO).

The Board, however, substantially concurred with the AO that your page 11 entries are not erroneous or unjust. In this regard, the Board noted that on 8 February 2021, you were issued a page 11 entry for being convicted of an offense of the misdemeanor crime of domestic violence, the entry included notification that it is unlawful for you to possess, ship, transport, or receive a fire arm. The Board also noted that on 12 April 2021, pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 counseling entry for assaulting your spouse in the presence of a minor. On the same date, you were notified that you are eligible, but not recommended for promotion due to pending administrative separation. The Board noted, too, that you acknowledged the entries and in your statement, you indicated that you did not have defense counsel, you did not fully understand what you were being charged with, and when you realized the severity of your charges, the

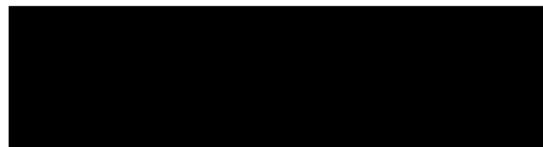
window of opportunity for an appeal passed. The Board determined that the contested entries were written and issued according to regulations. Specifically, the 6105 counseling entry provided written notification concerning your deficiencies, and afforded you the opportunity to submit a rebuttal. Moreover, your former CO signed the entries, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do.

The Board noted the advocacy letter from your current CO, but was not persuaded. The Board noted that your assault and battery conviction was overturned on appeal and you were subsequently convicted of simple affray. The Board also noted the civil courts notice that no record exists for the provided criminal file. The Board determined that although the initial conviction for assault and battery was overturned, the facts underlying your conviction for simple affray still constitute misconduct as described in the counseling entry. The Board also determined that the conviction for simple affray does not render the counseling entries erroneous, the change to your conviction by the civil court has no bearing on your CO's authority to issue the counseling entries. Moreover, 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 there is insufficient evidence of a material error or injustice warranting corrective action.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

2/2/2023

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Deputy Director

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