



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. 7211-22
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 21 March 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 applications, 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 to the Board by Headquarters, Marine Corps, Military Personnel Law Branch (JPL). The AO was provided to you on 21 December 2022, and you were given 30 days, plus an extension, in which to submit a response. Your response, to include supplementary material consisting of four (4) audio recordings from your administrative discharge board (ADB) hearing, timeline of events as presented to the ADB, summary of the NCIS investigation, and notification of administrative separation proceedings, were considered by the Board.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 11 May 2022 and associated rebuttal dated 16 May 2022. The Board considered your contention that the counseling entry was placed into your record based on suspicion of committing acts of domestic violence before all the facts were presented and, once all the facts were presented to the ADB, the misconduct was found to not have happened. You assert you have been cleared of any wrong doing, rendering the entry and rebuttal erroneous. You further contend that since the ADB findings, both the Commanding Officer (CO) █ and Commanding General, █, concurred with the findings and subsequently retained you. In support of your request, you provided as evidence the findings of the ADB with the endorsements by your chain of command, and court documentation for consideration.

The Board, however, concurred with the AO, and noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for violation of Articles 128 and 128b of the Uniform Code of Military Justice, assault consummated by a battery and domestic violence, respectively. Specifically, for strangling your spouse on three separate occasions, rendering her unable to breathe. The Board also noted that you acknowledged the counseling entry; however, in your rebuttal statement, you denied all allegations of domestic violence. The Board determined that the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the counseling entry, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do. The Board, thus determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

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. The Board noted your retention at an ADB and the subsequent command endorsements; however, determined that the ADB is administrative in nature, and its purpose is to determine suitability to serve and the ability to meet and maintain the required standards of performance. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling statement and associated rebuttal. 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,

4/6/2023

