



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

██████████
Docket No. 7443-22
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 19 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.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove a 12 May 2021 Administrative Remarks (Page 11) counseling entry, and the Preliminary Inquiry (PI) completed on 9 April 2021 and acknowledged by the Commanding Officer (CO) on 15 April 2021 from your official military personnel file. You contend the counseling is unjust because it resulted from the biased PI and contained erroneous language. Specifically, you contend the counseling contained language, stated as facts, that was erroneous because there were no witnesses, evidence, or findings in the PI suggesting extramarital sexual conduct took place on two separate occasions.

You further contend the counseling “embellishes” the allegations and inaccurately represents the PI’s biased findings. The Board also considered your contentions and “concerns” of command influence and bias in the staff’s and Investigating Officer’s (IO’s) actions. Specifically you contend the staff briefed witnesses and the IO prior to the initiation of the investigation resulting in the IO having a predetermined conclusion prior to initiation of the PI and the actions of the

staff “injected bias” into the process. Further, you contend your Article 31b rights were violated because the nature and explanation of the accusations were not disclosed by the IO and you only became aware of the accusations after receiving the PI through a Freedom of Information Act request. Additionally, you contend you were denied the opportunity to be questioned or write a statement with the aid of legal counsel. Lastly the Board considered the contentions you raise with respect to the IO and PI. Specifically, your “summary of concerns” provides “amplifying details” regarding “Violation of Article 107 – False Official Statement” which the Board noted were contentions alleging errors and injustices committed by the IO in the conduct of his investigation and his resulting PI.

The Board determined the contested counseling entry of 12 May 2021 creates a permanent record of matters the issuing CO deemed an essential part of your military history. The Board noted the counseling entry, which met the requirements detailed in MCO P1070.12K W/CH 1 (IRAM), is a valid counseling entry. Specifically, the Board noted the entry provided the opportunity to rebut the entry, which you exercised, and was appropriately issued by the CO as evidenced by his signature on the entry. Based on the available evidence, specifically the PI enclosures you submitted, the Board determined the CO’s counseling was supported by the evidence.

Further, the Board determined there was insufficient evidence of an error or injustice in the conduct of the PI, actions of the IO, or actions of the staff to support your contentions of command influence, bias, or impropriety. Additionally, the Board determined there was insufficient evidence your Article 31b rights were violated, and besides that, a failure to advise you of your Article 31b rights only makes any unwarned statement you make inadmissible at a court-martial; other uses (nonjudicial, administrative uses) of an unwarned statement are not prohibited.

The Board thus concluded there is insufficient evidence of material error or injustice warranting the removal of the 12 May 2021 counseling entry from your Official Military Personnel File (OMPF). The Board also noted the PI was not inserted into your OMPF.

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,

2/17/2023

