



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

██████████
Docket No. 7768-22
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 17 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 the 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.

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

The Board carefully considered your request to remove the following from your official military personnel file (OMPF): (1) Report of Misconduct (ROM) dated 4 April 2019 and associated documents, and (2) all adverse material pertaining to the Board of Inquiry (BOI). The Board also considered your request to grant any other relief warranted.

The Board considered your contentions that your daughter has been suffering from behavioral problems, you and your wife tried to address and treat the problems to no avail and when you found out your daughter was engaging in inappropriate relations with a high school senior, you disciplined her as you believed it to be a reasonable form of discipline under the laws of the ██████████. As a result, your daughter ran away to a friend's house, contacted the police and reported that she was being abused by you and your wife, which led to you and your wife being briefly detained and arrested.

You assert that you immediately reported the incident to your command and you were subsequently required to show cause for retention before a BOI, despite the civilian court deferring adjudication as part of a diversion program and subsequently dismissing charges against you due to completion of the deferred adjudication. You also argue that the BOI unanimously found that the allegations against you for violation of the Uniform Code of Military Justice, Article 128 (assault) and Article 133 (conduct unbecoming an officer and gentleman) were unsubstantiated. You assert that both civilian and Marine Corps tribunal dismissed all charges regarding same facts and circumstances that supported the original ROM.

The Board noted that the Commanding General, [REDACTED] Marine Division submitted the ROM on 4 April 2019 in accordance with the Legal Support and Administration Manual (LSAM). The ROM was reviewed by the Deputy Commandant, Manpower and Reserve Affairs and was determined to meet the standard for inclusion in your OMPF in accordance with the Marine Corps Individual Records Administration Manual. The Board further noted that, in accordance with LSAM guidance, the General Court Martial Convening Authority (GCMCA) is not bound by the actions of military or civilian court and, therefore, determined that inclusion of adverse material in your OMPF was at the discretion of the GCMCA. The Board thus concluded that your evidence is insufficient to warrant removal the ROM and all related matters from your OMPF.

With regard to your request for removal of all adverse material pertaining to the BOI, the Board noted that the scope of a BOI is not judicial, but to form findings and recommendations that provide a basis for separation for cause, or retirement in the current grade or a lesser grade, and to present matters favorable to a Service member's case on the issues of separation and characterization of service. The Board determined that the BOI did not determine you were "not guilty" of misconduct, but rather, that your misconduct did not warrant separation from the U.S. Marine Corps. Furthermore, the Board determined that the BOI's findings were not binding on your Commanding General, who had independent authority to determine whether you committed the misconduct. As such, the Board concluded that your evidence is insufficient to warrant any of your requested relief.

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 the 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,

2/15/2023

[REDACTED]