



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

█
Docket No. 8307-22
Ref: Signature Date

Dear █

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 February 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 any and all adverse material from your official military personnel file (OMPF) pertaining to the incident that was the subject of the Report of Misconduct (ROM), which includes 45 pages of related material. The Board considered your contentions, through counsel, that the mistake you made before you were commissioned, or even affirmed your desire to serve as a Naval Officer, has continued to adversely affect your career. You argue that given the statute of limitations (SOL), there is no legal mechanism to hold you accountable for the incident based on your performance as an Officer. You assert that misconduct that occurred prior to your commissioning should not be used to define one's career. You believe that based on the lack of evidence and SOL regarding the incident, your actions do not rise to the level of misconduct, and a review of the record makes it clear that the alleged misconduct in this case could not be the subject of any disciplinary matters. You further believe that you are mentally, physically, morally, and professionally

qualified for promotion, served your country in an honorable manner, has proven to be an outstanding and extremely capable officer and aviator, and the inclusion of the adverse material is an injustice.

The Board, however, determined that the issuance of the ROM, with associated material, is in accordance with the Legal Support and Administration Manual (LSAM) and Officer Administrative Separations (SECNAVINST 1920.6D) guidance. In this regard, the Board noted that although your immediate commanding officer initially determined that you did not commit misconduct, they concurred that there was sufficient evidence to the contrary, and the command took appropriate administrative measures in documenting the misconduct. The Board further noted that, in accordance with LSAM guidance, the General Court Martial Convening Authority (GCMCA) has the authority to determine whether or not you committed misconduct, and if so, may document the matter via a ROM. The GCMCA, upon review and consideration of all the evidence of record, determined that despite the SOL, your conduct while a Midshipman at the U.S. Naval Academy constituted appropriate administrative action, and the inclusion of adverse material in your OMPF relating to that incident, was warranted. Additionally, your ROM was determined by the Deputy Commandant, Manpower and Reserve Affairs to be sufficient in law and fact, as advised by the Staff Judge Advocate to the Commandant of the Marine Corps, and deemed appropriate for inclusion in your OMPF. The Board, in making their decision, took into consideration that the Secretary of the Navy's (SECNAV) removed your name from the Fiscal Year 2021 U.S. Marine Corps Captain Promotion List and, despite your objections to adverse material being included in your OMPF, determined your misconduct warranted such action. The Board thus concluded that your evidence is insufficient to warrant relief and that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your ROM and associated material from your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

3/11/2023



Executive Director

Signed by: 