



Manual for Courts-Martial (2019 ed.); 3) the alleged misreporting of a sexual harassment on 5 May is erroneous and supported in the 7 May 2022 email; 4) there is a lack of documented counseling throughout your relationship with the RS in accordance with the Marine Corps Performance Evaluation System (PES) Manual, as well as the timing of the counseling received on 31 July 2022; 5) there was conflicting information surrounding your relief; 6) you were relieved by the SgtMaj instead of the Commanding Officer (CO); 7) an investigation was conducted after your departure to justify your relief; 8) you were not counseled by the CO according to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN); 9) there were numerous procedural violations of the Judge Advocate General Manual (JAGMAN) Investigation Handbook; and 10) the chain of command used unethical medical screening procedures in regard to your mental and overall physical health.

The Board noted that your CO directed a Preliminary Inquiry (PI) into the facts and circumstances surrounding allegations that you were derelict in your duties, insubordinate, and demonstrated unethical conduct. The Board also noted that the Investigating Officer (IO) opined that all evidence indicates that you were derelict in your duties and that your unprofessional behavior during the deployment deteriorated to the point of insubordination and disrespect toward a commissioned officer. The IO found that you failed to investigate the incident of sexual harassment once you were made aware that a Marine in your company had a liberty incident involving a Sailor. The IO also opined that your relief and removal prevented a more serious offense from occurring and protected the Marines of the company from the effects of your increasingly erratic and offensive behavior.

The Board noted that pursuant to paragraph 6105 of the MARCORSEPMAN, you were issued a counseling entry for disrespect towards a commissioned officer and dereliction in the performance of your duties as the company 1stSgt. Specifically, for failing to properly notify the command of a report of sexual harassment on 5 May 2022, you willfully disrespected a commissioned officer on 7 May 2022 and 2 August 2022, and you routinely failed to fulfill assigned task during unit operations from March – August 2022. The Board also noted that you acknowledged the entry and in you provided a statement in mitigation of each deficiency. The Board, however, determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the 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 the entry afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entry, and determined that your misconduct was a matter essential to record, as it was within his authority to do. The Board further determined that your CO acted properly and within his discretionary authority by relieving you for cause as the company 1stSgt and issuing your counseling entry.

Concern the period of dereliction of duty and lack of specific instances of disrespect, the Board noted that the period of dereliction included a period when you received a favorable fitness report. The Board noted that the PI indicated specific instances when you did not properly fulfill your duties as the company 1stSgt and determined that the receipt of your favorable fitness report does not invalidate the findings by the IO. The Board also determined that your CO was not required to identify specific instances of disrespect in the counseling entry. Counseling entries are administrative in nature, therefore, a counseling entry is not bound by Manual for

Courts-Martial requirements. The Marine Corps Individual Records and Administration Manual only mandates that a Marine have the opportunity to contest, explain or rebut any correspondence containing adverse material. In this regard, you fully availed yourself of this right and your statement was properly filed in your official military personnel file.

Concerning the circumstances surrounding your relief and counseling entry, the Board noted that the CO directed a PI prior to formally relieving you of your duties and the deficiencies noted in your counseling entry were substantiated in the PI. The Board determined that based on the geographic separation after your relief and dynamic circumstances of a deployed environment, while not ideal, the notification was not improper, and ultimately had no bearing on the CO's decision to formerly relieve you.

Concerning procedural violations related to the PI, the Board noted that according to the JAGMAN Investigations Handbook, there are no requirements or restrictions governing how an inquiry is to be accomplished and generally, the PI should not take any longer than three working days. The Board determined that the amount of time allotted to complete the PI was at the discretion of the CO. The Board also determined that while a PI is convened to determine whether some sort of JAGMAN investigation is necessary, the CO is not prohibited from determining that the PI is sufficient to take administrative action.

The Board carefully considered the totality of your evidence, however, the Board is not an investigative body and relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

3/3/2023

█