



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. 69-23
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 31 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.

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 24 February 2020 Administrative Remarks (Page 11) counseling entry. The Board considered your contentions that the previous Board (Docket No. 589-22) did not address the allegation of fraternization as well as your claim that the counseling entry was not written in accordance with MCO P1020.12K. The Board also considered your contention that the counseling entry is in violation of US Navy Regulations 1165 which you claim defines Fraternization as "personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited." Finally, the Board considered your claim that the Command Investigation recommended you receive a counseling entry for violation of Article 134 of the Uniform Code of Military Justice (UCMJ) and the counseling entry does not mention this article of the UCMJ.

The Board noted your Commanding Officer (CO) directed a command investigation into allegations of adultery and fraternization between you and another Marine. The Board noted your CO determined the evidence showed a relationship that went beyond professional, overly casual, and into the realm of a romantic relationship between a superior and a subordinate. Although your CO noted there was no evidence that the conduct had an adverse effect on the unit, the relationship compromised the Chain of

Command and undermined the impartiality of the Chief Drill Instructor towards one of your Senior Drill Instructors.

Consequently, you were issued a counseling entry for violation of U.S. Navy Regulations 1165. Specifically, while you served as the Chief Drill Instructor assigned to [REDACTED] your conduct with a Senior Drill Instructor “was determined to be unduly familiar and that of an inappropriate relationship with someone other than your spouse, and who was subordinate in billet within your series.” The Board also noted you acknowledged the entry, and you submitted a statement in response, which is also filed in your official military personnel file (OMPF).

After careful consideration of your application for reconsideration and review of your new evidence, the Board affirmed the prior Board decision and denied your requested relief. In this regard, the Board determined that the administrative error in omitting you the option to choose whether to submit a rebuttal is not material because you were not disadvantaged in any way because you were afforded your right to due process by submitting a rebuttal to the record as evidenced by the 25 February 2020 rebuttal found in your OMPF.

Furthermore, the Board considered your contentions that the a previous panel of this Board did not address the allegation of fraternization as well as your claim that the counseling entry was issued for violation of US Navy Regulations 1165 vice Article 134, UCMJ. In this regard, the Board determined the counseling entry was properly issued in accordance with paragraph 1165.2 of US Navy Regulations, prohibiting fraternization, which states “personal relationships between officer members *or enlisted members* that are unduly familiar and that do not respect the difference in rank or grade are prohibited.” Further, the Board noted that MCO P1020.12K offers commanders a wide discretion regarding the subject-matter of a counseling, so long as a CO has the necessary understanding of the facts and circumstances surrounding the subject matter of the counseling in order to exercise the judgment entrusted upon him or her. The Board concluded that your CO was best situated to determine the veracity of your misconduct. 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 thus concluded that the counseling entry is valid and does not constitute a probable material error or injustice warranting removal from your record.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken. 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,

2/27/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]