



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. 763-23
Ref: Signature Date



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 18 May 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 as well as the 4 April 2023 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (PERS-00J). Although you were offered the opportunity to respond to the AO, you chose not to do so.

The Board carefully considered your request overturn your Administrative Separation. You also request constructive service from your date of separation to 20 year retirement eligibility and any additional relief that the Board deems appropriate. The Board considered your contention that there was a substantial denial of due process when the Letter of Deficiency (LOD) submitted by your legal counsel was excluded from review by the Navy Personnel Command (NPC) and when NPC refused to correct their error when it was brought to their attention. You also contend that the Administrative Separation (ADSEP) Board members' found that the evidence substantiated obstruction of justice, the members struggled to reconcile the mental state required to substantiate obstruction of justice with the facts, and ultimately concluded that you should have known something and that you should have said something. You claim that the ADSEP Board members stopped short of concluding that you knew you were obstructing justice or that you were assisting another to hide evidence. You argue that there was no evidence whatsoever to suggest that you knew or believed that you were preventing the Government from investigating a wrongful

cohabitation crime against another person. The notion that you had that level of awareness of the law is absurd. You acknowledged that it may be true that you should have known better; however, that is not the legal standard that the Navy and the ADSEP Board is required to follow. In conclusion, the findings that a basis existed to believe you committed this offense is unsupportable.

The Board noted the Naval Criminal Investigation Service (NCIS) Report of Investigation (ROI), in which a woman from ██████████ reported that she was lured to ██████████ under the auspices of having a legitimate job. However, upon arrival she was forced to work as a prostitute by another Sailor and was eventually able to run away. She alleged that you stayed at the other Sailor's residence often and strangled her during sex on several occasions. The Board also noted that the other Sailor admitted to having ██████████ women stay at his house working as prostitutes and that you had sex with one of the women. When questioned, you reported having consensually sex with one of the women, you denied knowing details about why they resided at the other Sailors house, and you admitted to having the ██████████ women stay at your house after the other Sailor requested your help. The Board noted, too, that according to the NCIS ROI you and the other Sailor lived in close proximity and you used your credit card to purchase plane tickets to fly two women from ██████████ to ██████████.

The Board noted that your ADSEP Board unanimously found that the evidence did not support a basis for misconduct for commission of a serious offense for assault and for patronizing a prostitute. The Board did, however, unanimously find that the evidence did support a basis for misconduct for commission of a serious offense of obstructing justice and recommended your retention.

The Board, however, substantially concurred with the AO. In this regard, the Board found no evidence that your due process rights were violated and determined that your contention lacks merit. When the Deputy, NPC became aware that correspondence incorrectly noted that the LOD was not submitted, the entire package was rerouted with the LOD via PERS-832, and again to the Assistant Secretary of the Navy (ASN). The ASN reviewed your case with the LOD and, on 2 December 2021, approved the ratification of your ADSEP with a General (Under Honorable Conditions) characterization of service. The Board found your statement that you did not know or believed that you were preventing a crime unconvincing. Obstruction of justice can occur even if there are no charges pending, nor an investigation already underway. The law requires that you have reason to believe there were or would be criminal proceedings pending. The Board noted that the Department of Defense (DoD) has required training on human trafficking since 2005. The DoD policy Combating Trafficking in Persons was promulgated to oppose prostitution, forced labor, and any related activities contributing to the phenomenon of trafficking in persons. Based on the evidence, your purported knowledge of prostitution, and Combating Trafficking in Persons Training requirements, the Board determined that it is unlikely that you were not aware that the women were being used as prostitutes and that this activity was a violation of the Uniform Code of Military Justice (UCMJ) that could lead to criminal proceedings.

The Board also determined that your argument that the ADSEP Board members struggled to reconcile the mental state required to substantiate obstruction of justice is without merit. The Board members found that you were guilty of obstruction for knowingly harboring a prostitute and

not reporting to the chain of command. The Board determined that the ADSEP Board members understood the *mens rea* requirement for obstruction of justice, and did not misapply the requisite mental state.

The Board also considered the fact that the ADSEP Board members had an opportunity to listen to arguments favorable to your case, to review the recorded NCIS interview, NCIS ROI, UCMJ offense elements, and applicable regulations when finding that your conducted constituted obstruction of justice. The Board determined that it was reasonable for the ADSEP Board members to find that you had the intent to impede the due administration of justice through your actions. Based on the totality of the evidence, the Board found your arguments unconvincing and determined that the ADSEP Board did not commit a material error. 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 there is no probable material error, substantive inaccuracy, or injustice warranting overturning your administrative separation or any associated relief. 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,

6/6/2023

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Executive Director

Signed by: █