



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. 1367-23
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 30 March 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.

The Board carefully considered your request to remove an Administrative Remarks (Page 11) 6105 counseling entry dated 9 November 2021 from your Official Military Personnel File (OMPF). You contend the counseling has several inaccuracies and accusations. Specifically, you contend the counseling entry should only pertain to the information for which you received nonjudicial punishment (NJP), which was adultery and violation of the “no contact” order, and the accusation of assault, which has been unjustly included, prevents your future retention. In support of your contention the assault accusation is untrue, you submitted a “Local Criminal History Check” from the █ dated 6 February 2023, which certifies that the “records of the █ have been searched and no records have been found.”

The Board determined the counseling entry of 9 November 2021 creates a permanent record of matters your commanding officer deemed significant enough to document. The Board also determined the entry met the 6105 counseling requirements detailed in MCO 1900.16 (MARCORSEPMAN). Specifically, the Board noted the entry provided written notification concerning your deficiencies, specific recommendations for corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to successfully

take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. You were afforded the opportunity to rebut the counseling entry, and although you indicated you chose to make such a statement, a statement is not in your OMPF. Further, the Board noted the entry was appropriately issued by the CO as evidenced by his signature on the entry. The Board considered the local criminal history check but noted that evidence, by itself, is insufficient to establish that you did not commit assault against your spouse as described, in detail, by the CO in the counseling entry. Further, the Board considered your contention the counseling entry should only address the misconduct for which you received NJP but noted the CO has wide discretion regarding the subject matter of his counseling and determined it was within the CO's discretionary authority to include the assault in the counseling entry. The Board concluded there is insufficient evidence of material error or injustice warranting the removal of the 9 November 2021 counseling entry. 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,

4/21/2023

