



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

██████████
Docket No. 1398-23
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 25 April 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 14 March 2023 Advisory Opinion (AO) provided to the Board by Headquarters Marine Corps, Military Personnel Law Branch (JPL). Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 20 November 2020 and associated rebuttal dated 1 December 2020. The Board considered your contention that you believe the command's actions were not completed in accordance MCO 5354.1E, Prohibited Activities and Conduct (PAC). Specifically, per paragraph 040201, commanding officers (CO) must submit all reportable information to the Equal Opportunity Advisor (EOA)/Military Equal Opportunity office and direct the supporting EOA to open an initial Discrimination and Sexual Harassment (DASH) report. You further contend after receiving the counseling, you were given an adverse fitness report and reassigned. You reached out to the squadron EOA to find out if his office received any information on the case and if a DASH report was created, to which he said no. Furthermore, you were never given an Offender Acknowledgement Record to be signed and filed with a DASH report or given a Request for Appeal to the General Court-Martial Convening Authority by the command or EOA.

The Board concurred with the AO, and determined that by signing the counseling entry, your CO indicated that he believed it to be appropriate based on the facts and circumstances, and using a


preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry at the time, and that the entry met the counseling requirements in accordance with the Marine Corps Individual Records Administration Manual and Marine Corps Separation and Retirement Manual. Specifically, the Board noted that 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 rebutted the counseling and the Board took your statement into consideration.

The Board noted that a counseling entry is given a presumption of regularity which requires you to provide sufficient evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. In this regard, the Board took into consideration your statement, as well as the documents you provided. However, the Board determined that the counseling entry was factual at the time of issuance based on a preliminary investigation that substantiated your misconduct, and there is nothing that precluded your CO from issuing the counseling entry. Furthermore, you provided no evidence to support your contentions that the counseling entry was a result of a PAC complaint. As such, the Board concluded that the counseling entry does not constitute probable material error, substantive inaccuracy or injustice warranting removal from your official military personnel file. 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,

5/11/2023

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Deputy Director

Signed by: 