



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. 2793-23
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 applications on 18 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.

The Board carefully considered your request to remove your 7 February 2023 counseling entry and associated rebuttal. The Board considered your contention that the counseling entry was the result of an erroneous command investigation. The Board also considered your claim that the counseling entry accused you of something you didn't do.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a counseling entry for Violation of Article 134, Extramarital Sexual Conduct, by wrongfully engaging in extramarital conduct with █ while legally married. The Board also noted that you acknowledged the counseling entry and in your statement, claim that you were accused of something you didn't do. You further claim that the counseling entry was based upon your decision to dissolve a difficult marriage with your spouse. The Board determined that the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling 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 it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the

counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do. The Board, thus determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

In regards to your contention that the counseling entry was the unjust result of an erroneous command investigation since you were accused of something you didn't do, the Board noted that the Commanding Officer, [REDACTED] conducted an investigation surrounding allegations of adultery and concurred with the investigating officer's findings of fact and determined that you engaged in an inappropriate sexual relationship while married. Furthermore, the Board noted that your divorce was not finalized until 23 January 2023, after your sexual relationship with [REDACTED]. 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 removal of the counseling entry from your record. 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,

5/12/2023

[REDACTED]

Deputy Director

Signed by [REDACTED]