



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

██████████
Docket No. 2854-23
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. 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.

The Board carefully considered your request to remove your 30 September 2016 Administrative Remarks 6105 (page 11) counseling entries. You also requested to remove your 30 September 2016 Unit Punishment Book (UPB), which documents your Non-Judicial Punishment (NJP). The Board considered your contentions that there is no record of any investigation and therefore no substantiating evidence regarding the alleged charges.

With regard to your NJP, the Board noted that on 30 September 2016, you received NJP for Violation of Article 107, False Official Statements, of the Uniform Code of Military Justice (UCMJ). You were advised of your rights under Article 31, UCMJ, given the opportunity to consult with a military lawyer, and advised of your right to demand trial by court-martial in lieu of NJP. You agreed to accept NJP and you were advised of your right to appeal on 30 September 2016. The Board determined that the Marine Corps properly followed all of its procedures for awarding a NJP. You were advised of your right to refuse NJP and demand trial by court-martial in lieu of NJP, but you chose not to. You were also given an opportunity to consult counsel prior to accepting NJP. You agreed to accept NJP subject to your right of appeal, but you did not appeal. The Board thus determined that your Commanding Officer was

well within his discretionary authority to impose NJP, and disagreeing with the action taken against you does not make it improper. Accordingly, the Board concluded that there is no probable material error or injustice warranting removal of your NJP.

Subsequently, the Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were also issued two counseling entries. The first counseled you for your finding of guilt at Battalion Level NJP for violation of Article 107, of the UCMJ. Then, you were issued another counseling entry which indicated that there was substantiating evidence that, from March 2016 to September 2016, you engaged in an inappropriate relationship with a foreign national female while maintaining your current marital status with your spouse. You acknowledged (signed) both entries, and the Board noted although you elected to submit a statement, the Board found no evidence of a statement, and you provided none.

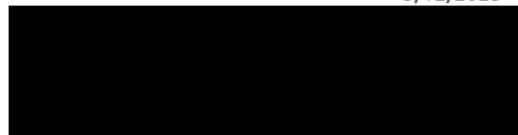
The Board determined that the contested counseling entries were written and issued according to the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for 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.

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 concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the UPB entry or two 6105 counseling entries 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



Deputy Director

Signed by: 