



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

██████████
Docket No. 4354-23
Ref: Signature Date

████████████████████
████████████████
██████████████

Dear ████████████████████,

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 19 September 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 advisory opinion (AO) provided by ██████████, ██████████, ██████████ dated 25 July 2023. The AO was provided to you on 2 August 2023. Although you were given 30 days in which to provide a rebuttal, you chose not to do so.

The Board carefully considered your request to remove the Letter of Substandard Performance dated 15 April 2022, and all related documentation from your official military personnel file (OMPF) related to your relief for cause on 31 March 2022. The Board considered your contentions that following the submission of your rebuttal to the Letter of Substandard Performance, a surrebuttal and additional information was submitted to the adjudicating authority without your knowledge, which constituted a violation of your due process rights by failing to allow you to review the documentation. Particularly, that the surrebuttal included a redacted copy of an e-mail from an unidentifiable captain to an unidentifiable major in an attempt to discredit specific facts recounted by you in your initial rebuttal. You claim the e-mail provided is misleading because it purportedly, but fails to show, that you were in receipt of a specific legal brief given by the staff judge advocate (SJA), and including this information in the surrebuttal implies that you lied about not receiving the slides you referenced in your rebuttal. You assert that the version of the command legal brief you received from the command SJA

omitted mentioning of unlawful command influence and this lack of legal training attributed to your comments during the command climate survey debrief.

The Board, however substantially concurred with the AO and determined that the issuance of the Letter of Substandard Performance, with associated material, was included in your OMPF in accordance with the Legal Support and Administration Manual (LSAM) and Individual Records Administration Manual (IRAM) guidance. In this regard, the Board noted that Commanding General (CG), [REDACTED], determined there was sufficient evidence of misconduct, and the command took appropriate administrative measures in documenting the misconduct, which was concurred with by CG, [REDACTED]. The Board further noted that, in accordance with LSAM guidance, the General Court Martial Convening Authority (GCMCA) has the authority to determine whether or not you committed misconduct, and if so, may document the matter.

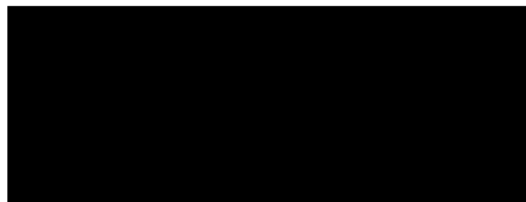
The Board understood that the GCMCA is required to address any and all allegations of legal error, and you are required to have the opportunity to “contest or rebut” subsequent correspondence containing adverse material. However, in this case, the Board noted that the GCMCA’s endorsement dated 10 June 2022, did not constitute adverse material, which would require that you be allowed to review and submit a response. The Board determined that the actions taken by the GCMCA were not in error.

Additionally, your Letter of Substandard Performance was reviewed by [REDACTED] [REDACTED], to be sufficient in law and fact, as advised by the SJA to the Commandant of the Marine Corps, and directed inclusion of the adverse material in your OMPF. The Board, in making its decision, acknowledged the evidence submitted, and, despite your objections to this adverse material being included in your OMPF, DC, M&RA, as the Show Cause Authority, determined your misconduct warranted such action. The Board thus concluded that your evidence is insufficient to warrant relief and that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your Letter of Substandard Performance and associated material from your OMPF.

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,

10/2/2023

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