



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

██████████
Docket No. 5652-23
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 31 October 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 8 September 2023 advisory opinion (AO) provided by the Marine Corps, Military Personnel Law Branch (JPL), and your response to the AO.

The Board carefully considered your request to remove the 1 May 2023 Administrative Remarks (page 11) counseling entries and associated rebuttals. You also request removal of all documents associated with your relief for cause and reinstatement of your selection to first sergeant (1stSgt/E-8). The Board considered your contentions that the counseling entries are the result of undue command influence, an abundance of inaccuracies from the investigation, the “recommended adjudication enforced,” as well as your allegation that you were subject to double jeopardy for the same violation. You believe the recommendations came solely from the Depot level and did not take into consideration the facts of either investigation, or the recommendation of the investigating officers (IOs). As evidence, you provided a letter from the regimental commander, the preliminary inquiry (PI), and command investigation (CI) for consideration.

After a review of your records, the Board found no documentation other than your counseling entries regarding your purported relief for cause. Additionally, concerning your promotion to 1stSgt, the Board found no evidence that the Commandant of the Marine Corps has made a final determination in your case. Therefore, the Board determined neither request was ripe for

consideration. As such, the Board only considered your request to remove the contested counseling entries.

The Board noted the 1 September 2022 PI and IO's recommendation that you be formally counseled for knowingly having a physical relationship with a Sergeant and potentially another party that were not your current wife as listed in your records. The Board also noted the 1 March 2023 CI, IO's finding that you violated the no contact order by appearing at the Staff Sergeant's hotel room and recommendation for no further action by First Battalion.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued page 11 entries counseling you for violating U.S. Navy Regulations 1165, by engaging in an inappropriate, unprofessional, and unduly familiar relationship with a Marine subordinate to your grade, engaging in a physical altercation with another Marine, and violating the no contact order. The Board also noted that you acknowledged the entries and, in your statements, claim that your personal relationship with the female Marine never impacted your objectivity or your performance of your duties, and you indicated that you were attempting to deescalate/intervene in what you believed to be a sexual assault. The Board, however, determined that the contested entries were written and issued according to the MARCORSEPMAN. Specifically, the entries 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 entries, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do.

The Board substantially concurred with the AO that the counseling entries are valid. The Board noted the correspondence submitted in support of your request; however, the Board was not persuaded. The Board determined that there is sufficient evidence to support the basis for the counseling entries. The Board also determined that each entry addressed a deficiency related to separate incidents of misconduct that occurred months apart. Moreover, the Board determined that double jeopardy prohibits an individual from prosecution for the same crime but does not prohibit a CO from issuing a counseling entry; therefore, the Board concluded it does not apply in your case. The Board further determined that CO's are not bound by the recommendations of IOs. 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. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the two counseling entries and associated rebuttals 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,

11/21/2023

