



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. 7120-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 30 January 2024. 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, as well as the 13 December 2023 Advisory Opinion (AO) provided by the Headquarters Marine Corps (JPL) and your response to the AO.

The Board carefully considered your request to remove all records from the Naval Criminal Investigative Service (NCIS) Defense Central Index of Investigations (DCII) titling and all Reports of Investigation (ROI) that indicate you committed any crime associated with child pornography. The Board considered your contention that no credible evidence or probable cause exists to substantiate that you possessed child pornography. The Board also considered your claim that local, state, federal, and military authorities all refused to go forward with any charges against you as well as your contention that the Non-judicial Punishment (NJP) imposed for the alleged offense was suspended.

The Board, however, substantially concurred with the AO and NCIS determination that your name was properly titled and indexed in accordance with Department of Defense Instruction (DoDI) 5505.07. In this regard, DoDI 5505.07 directs Law Enforcement Agencies (LEAs) to

“title subjects of criminal investigations in DoD LEA reports and index them in DCII as soon as there is credible information that they committed a criminal offense. When reviewing a titling and indexing review request, the expungement official will consider the investigation information and direct that the subject’s information be corrected, expunged, or otherwise removed from the DoD LEA report, DCII, and any other maintained in connection with the DoD LEA report when: (1) probable cause did not or does not exist to believe that the offense for which the person was titled and indexed occurred; (2) Probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense.” In this regard, the Board noted you gave a voluntary statement to NCIS in which you admitted to downloading a pornographic video of a child to your external hard drive. The Armed Forces Center for Child Protection performed a Sexual Maturity Rating of the video at issue and determined the video depicted a minor child under the age of 18 engaging in sexual acts. Further, the Board noted in the NCIS determination letter that they were satisfied there was no basis to expunge your DCII entry – either under the “credible evidence” standard of DoDI 5505.07 or under any reasonable interpretation of the “probable cause” standard anticipated in the future version of DoDI 5505.07 and Public Law 116-283 Sec. 545.

Regarding your claim that no charges were proffered by local, state, federal, and military authorities, as well as your assertion that your 6 March 2009 NJP was suspended, the Board concluded these facts are not dispositive of whether the NCIS DCII entry and ROI should be expunged from your record. The Board determined the fact that no charges were proffered or that your NJP was suspended is not indicative whether the act did not occur. Ultimately, the Board found that you provided insufficient evidence to overcome the basis for which your information was entered in the DCII; specifically, your admission of committing the offense. Thus, the Board determined that NCIS Headquarters correctly denied your request to expunge the DCII entry and concluded that there is no probable material error, substantive inaccuracy, or injustice warranting expungement of the NCIS ROI and DCII entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

2/28/2024

