



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. 7662-23
Ref: Signature Date



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 application on 3 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the adverse material related to your Board of Inquiry (BOI) to prevent an injustice. Alternatively, you request to remove any references to sexual harassment, assault, or sexually charged comments. The Board considered your statement and contention that the BOI did not substantiate any findings related to sexual harassment or misconduct, only substantiated a single allegation of substandard performance of duty for failure to demonstrate acceptable qualities of leadership required of an officer of your grade, and recommended your retention. You argue that without evidence to support the finding of substandard performance, all of the documents relating to your BOI must be removed. You claim that the preponderance of the evidence before the BOI established above average

performance. You also claim that the allegations of sexual harassment were disproven before the BOI and the misconduct basis for separation was not substantiated.

The Board noted that the Command Investigation (CI) into alleged Marine Corps Prohibited Activities and Conduct (PAC) policy violations were substantiated. Specifically, the allegation of sexual harassment was substantiated. The sexual harassment involved comments of a sexual nature and physical contact, on numerous occasions you had conversations of a sexual nature with your subordinates, made inappropriate comments of a sexual nature in a civilian establishment and in the work environment, you made comments of a sexual nature that were unwelcome, you touched junior Marines on the shoulder, back and on one occasion, the chest, you uttered offensive comments about female Marines, and your behavior had an adverse impact on the unit and Marines. The CI also substantiated that your sexual comments and physical contact, interfered with multiple Marines' work performance, and created an intimidating, hostile, and offensive working environment.

Pursuant to paragraph 3005 of the Marine Corps Individual Records Administration Manual (IRAM), you were issued a page 11 entry counseling you regarding your misconduct substantiated during the CI. The Board noted that you refused to sign the counseling entry and determined that your refusal to acknowledge the counseling entry, forfeited your opportunity to submit a rebuttal. The Board also noted that according to the Legal Support and Administration Manual (LSAM), upon receipt of credible information, officer misconduct must be reported if a Marine officer is alleged, suspected, or reported to have committed misconduct for which NJP, court-martial, civilian prosecution, or a recommendation to CMC (JPL) for administrative discharge proceedings is possible under existing statutes and regulations. Accordingly, as the General Court Martial Convening Authority, the Commanding General, █ (CG, █), issued your counseling entry, in addition to a Report of Misconduct (ROM), and directed that you be required to show cause for retention. The Board determined your counseling entry and ROM are valid. Moreover, the CG, █ relied upon a preponderance of the evidence, which included the CI, when determining that your counseling entry and ROM were warranted.

Concerning the findings by your BOI, the Board noted that the BOI unanimously found that a preponderance of the evidence substantiated substandard performance of duty as evidenced by failure to demonstrate acceptable qualities of leadership required of an officer of your grade. The Board also noted that pursuant to 10 U.S.C. § 1182, the purpose of the BOI is to receive evidence and make findings and recommendations as to whether an officer who is required to show cause for retention on active duty. The Board determined that BOI proceedings are a separate and distinct administrative process and the findings by your BOI did not invalidate the counseling entry, ROM or any documents referencing sexual harassment, assault, or any sexually charged comments. The Board also determined that it is not a material error for separate fact finding bodies to arrive at different conclusions. Moreover, BOI's findings are not binding on the CG, who had independent and discretionary authority to determine whether you committed the misconduct.

The Board further determined that your adverse material was processed and included in your official military personnel file (OMPF) according to the Marine Corps OMPF Manual. As a

result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting the removal or redaction of documents associated with your BOI 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,

10/19/2023

