



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



Docket No. 9762-23  
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 applications on 19 December 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 6105 counseling entry dated 19 November 2021, and associated rebuttal (undated). The Board considered your contentions that issuance of the counseling is a severe injustice and the command failed to adhere to proper protocol. Particularly, no effort was made to investigate the events of the night in question. You believe you were swiftly deemed guilty and dismissed without due process and, the nature of the violation warranted a command investigation before any punishment. You state that an administrative separation board (ASB), held 13 months later, found a lack of evidence supporting the charges and the Commanding General endorsed the ASB's findings, recommending closure and your retention on active duty. You claim that the counseling is also impeding your reenlistment and assigning you a reentry code of "3."

The Board noted that pursuant to paragraph 6105 of the relevant version of the Marine Corps Separation and Retirement Manual, you were counseled for domestic violence. Specifically, for admitting to law enforcement that you slapped your husband. The Board also noted that you acknowledged the entry and elected to submit a statement. The Board noted that the 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 entry, and he determined that your misconduct was a matter essential to record. The Board determined your CO acted properly and within his discretionary authority when determining that your misconduct warranted the counseling entry.

Regarding your contention that you were retained at an ASB hearing, the Board considered the ASB's findings and recommendation, however determined that your CO's discretionary authority is not limited nor bound by the outcome of those proceedings. 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. Furthermore, the Board noted that an ASB does not determine guilt or innocence and is administrative in nature with the fundamental purpose of determining suitability for continued service on the basis of conduct and the ability to meet and maintain required standards of performance. The Board, in making their decision, acknowledged the evidence you provided and, despite your objections, determined that the counseling entry is valid. The Board also determined that any consequential result of the counseling, such as an unfavorable reentry code, is not unjust and does not invalidate the entry into your official military personnel file. The Board therefore found your evidence insufficient to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy or injustice warranting 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,

1/18/2024

