



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. 10436-23
Ref: Signature Date

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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 application on 21 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 application, 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 Naval Criminal Investigative Services (NCIS) Incident Report █ from records. The Board considered your contention that the information does not provide a clear and accurate portrayal of the events regarding the command's response to the allegation. You also contend that the addition of the information is unduly prejudicial given the circumstance of the offense. You apologized for taking the toothpaste from the Navy Exchange (NEX) and immediately took responsibility for your misconduct. You claim that your evaluations demonstrate that your character, military bearing, and professionalism were beyond reproach, and you were never charged or convicted of a crime by any administrative Board or Court. In addition, you have suffered significant hardship due to the titling information.

The Board, however, determined that the NCIS Incident Report was properly filed and indexed in the Defense Central Index of Investigations (DCII) database in accordance with Department of Defense Instruction (DoDI) 5505.07. In this regard, DoDI 5505.07 directs DoD Law Enforcement Agencies (LEA) 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.” DoDI 5505.07 defines credible information as, “Information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume that the fact or facts in question are true.” Your case was titled as a result of the Incident Report documenting your arrest for violation of Article 121, Uniform Code of Military Justice (larceny, less than \$500). Specifically, on 30 March 2018, you were witnessed leaving the NEX without paying for a tube of Crest white toothpaste and you emptied bottles of Triple Omega and Advanced Plus “MSM” pills into your flight suit pocket. You are also alleged to have taken a Remington Nose Trimmer and a second bottle of Crest toothpaste on 18 March 2018. Based on your own admission and statement, you “made the mistake of improperly taking property from the NEX on 30 Mar 18” and indicated “[t]his should of never happened due to my knowing of the improper nature.”

The Board took into consideration the probable cause and other factors required by law, and determined that probable cause existed and still exists to believe that you committed the crime of larceny during March 2018. The Board acknowledged your command’s actions after the incident and that the lack of conviction, however, these factors do not outweigh the evidence of your misconduct, credibility of the Incident Report, or probable cause standard. Moreover, according to DoDI 5505.07, “Once the subject of a criminal investigation is indexed in DCII, the information will remain in DCII, even if they are found not guilty, unless the DoD LEA head or designated expungement official grants expungement.” The Board also determined that expungement of the NCIS Incident Report and DCII record is not warranted. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

12/29/2023

