



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

■
Docket No. 44-24
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 application on 16 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 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 all derogatory material from your Official Military Personnel File (OMPF) related to your 9 May 2023 Special Court Martial (SPCM). The Board considered your contention the military judge found you not guilty of all specifications related to the trial and that your request is in line with the verdict. The Board also considered your assertion that all derogatory material should be removed pursuant to adjudication.

However, the Board noted pursuant to the Marine Corps Separation Manual (MARCORSEPMAN), on 26 July 2022, 23 August 2022, and 14 September 2022, you were properly counseled regarding the results of a positive urinalysis and determined the counseling entries were written and issued according to the MARCORSEPMAN. Specifically, the counseling 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 counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do. The Board also noted that you signed the counseling entries and elected to provide a written

statement. The Board, thus determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

The Board further noted that there is no mention of a SPCM in any of the aforementioned counseling entries. Finally, the Board noted the SPCM Statement of Trial does not include any additional statements that would invalidate the results of the positive urinalysis. Thus, the Board determined you provided insufficient evidence that the derogatory material (counseling entries) in your OMPF were materially in error or otherwise unjust. While the Board considered the guidance contained in MCO P1070.12K regarding the impropriety of mentioning administrative separation proceedings in cases that ultimately do not result in separation, the Board ultimately concluded that the mention of administrative separation proceedings in your counseling entries amounts to harmless error since the findings of the SPCM are contained in your record to provide context to the counseling entry language.

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. The Board found your evidence insufficient to overcome this presumption. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the derogatory materials 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,

2/7/2024

