



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. 9336-23
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 26 March 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 January 2024 advisory opinion (AO) furnished by the Marine Corps █ and your response to the AO.

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 29 September 2017 Report of Misconduct (ROM) and Board of Inquiry (BOI) Report. You also request that your record reflect career designation and a reserve appointment. The Board considered your contentions that the ROM is misleading, there is material error and substantive inaccuracy in the BOI findings, and the case was subject to unlawful command influence. Specifically:

(1) The ROM inserted false information to inflame the reader—the show cause authority—and to ensure you were punished. When the commanding officer ordered an investigation, an officer claimed he informally counseled you without any evidence to support the alleged

counseling. The evidence establishing the ██████████) as the driver of the vehicle was missing and other than the ██████████ claim, there is absolutely no evidence to support a claim that you were driving the vehicle.

(2) The BOI found that you were not the driver of the vehicle, did not obstruct justice, did not make a false official statement, and did not engage in conduct unbecoming of an officer. The BOI's conclusion of fraternization is contrary to the evidence and in direct contradiction to the unsubstantiated allegation of conduct unbecoming. Not once during the BOI did the government argue that the incident was prejudicial to good order and discipline.

(3) Prior to refusing non-judicial punishment you claim that you received a phone call from the command's executive officer threatening that things would get "really bad" if you exercised your protected rights. The command sought to influence you and the administrative process to deflect responsibility for allowing you and the SSgt to live together.

(4) The administrative errors resulting in your failure to career designate, inability to transition to the reserves, and delay in promotion started when you were left on personnel hold for almost eight months following the BOI. The undue delays in closing your case caused a cascading effect, ultimately preventing you from career designation, reserve consideration, and timely promotion.

In response to the AO, you indicated that you are working with an Officer Selection Office (OSO) for reappointment, which requires an exception to policy waiver, but is not a remedy for the presence of adverse information. You assert there is a potential material error and injustice based on lack of consideration of the Secretary of the Navy's decision to promote you, which warrants retroactive consideration for career designation and transfer to the Reserve Active Status List (RASL). You note that the police report and injuries were omitted from the ROM. You also assert that the elements of fraternization were not met and argued that nothing offered in the AO contradicts the evidence of error and injustice found in the ROM and BOI report, which should be removed.

The Board, however, substantially concurred with the AO that your case involved the interplay of multiple, separate processes, each process was separate, and handled in accordance with the applicable references without material error or injustice. In this regard, the Board noted that you and a SSgt were involved in a vehicle collision that resulted in the ██████████ arrest for driving under the influence (DUI). The Board also noted that the Commanding General, ██████████ ██████████ directed a command investigation into the DUI incident. Based on the findings of the command investigation, the ██████████ determined that misconduct occurred, documented your misconduct in a ROM, and recommend that you show cause for retention at a BOI. The ROM noted the circumstances that led to the ██████████ residing with you. The ROM also noted that you were informally counseled by a member of your command on the perceived impropriety of the living situation and to move the ██████████ out of your home. The ROM noted, too, the circumstances of the DUI incident. Specifically, you drove your vehicle to take the ██████████ to several bars where you both drank alcohol together; you were driving when you swerved into oncoming traffic and hit another vehicle head-on; witnesses saw your vehicle attempting unsuccessfully to reverse out of the collision site multiple times; and witnesses heard a person

removed from the vehicle fitting your description apologizing multiple times. The ██████████ informed police that she was driving and was arrested after blowing a blood alcohol concentration .20 percent. Later that morning, the ██████████ told hospital staff and police that she had not been driving, but was “taking the hit” for her ██████████. The ██████████ also revealed to her command that immediately following the collision, you switched seats so it would appear the ██████████ had been driving to prevent you from getting a DUI.

The Board noted that a ROM is required in all cases of misconduct where the first General Court-Martial Convening Authority (GCMCA) in the chain of command determines that the officer committed misconduct. In your case, the GCMCA acted within his discretionary authority when determined that you committed misconduct. The GCMCA would have relied upon information obtained during a command investigation, the policy report, and all available information in the months following the DUI incident before arriving at his conclusion. The Board also determined that it is not a material error or injustice for the CG to consider and document statements by the SSgt and witnesses. The Board concluded the ROM was submitted in accordance with the Marine Corps Legal Support and Administration Manual (LSAM).

Concerning your BOI’s unanimous finding that a preponderance of evidence substantiates misconduct and moral or professional dereliction by violating Article 134, Uniform Code of Military Justice (UCMJ), the Board determined that the BOI’s substantiated finding for fraternization is valid, and was not contrary or contradictory. The Board also determined there is sufficient evidence that your conduct met the elements for fraternization according to the *Manual for Court-Martials* (2016 ed.). The Board further determined that a substantiated violation of Article 133, UCMJ (Conduct Unbecoming an Officer and a Gentleman), was not required or necessary to substantiate the violation of Article 134, UCMJ. The Board considered the BOI transcript and determined that you were afforded all due process rights, a full and impartial hearing and the BOI, and an opportunity to respond to and rebut the allegations. The Board concluded that your BOI was conducted in accordance with the Department of the Navy Administrative Separation of Officers Instruction and the substantiated violation for fraternization is valid.

Concerning your claims of unlawful command influence, the Board determined that your claims are not supported by sufficient evidence. The Board found no evidence that you were threatened by the executive officer or that the command sought to influence the administrative process to deflect responsibility for allowing you and the SSgt to live together.

Concerning your personnel hold, career designation, reserve consideration, and promotion, the Board substantially concurred with the AO that your misconduct case, consideration for career designation, and promotion delay were separate processes. In this regard, your misconduct case triggered the personnel hold in accordance with the LSAM. Your promotion was later withheld via a separate process in accordance with 10 U.S.C. section 624, 10 U.S.C. section 629, and the Department of the Navy Commissioned Officer Promotion Program. The Board determined that the personnel hold, and your promotion withhold were both appropriate, and conducted in accordance with applicable regulations. The Board also determined that neither your personnel hold nor promotion withhold prevented the consideration of your record for career designation. In fact, various Officer Retention Boards for which you were eligible considered your record for

career designation. Accordingly, the Board found no basis to reconsider your record for career designation.

Concerning your appointment to the RASL, the Deputy Commandant, Manpower and Reserve Affairs (DC (M&RA)) reviewed your record and denied an appointment to the RASL. In accordance with the Department of Defense Instruction for Original Officer Appointments, an individual recommended for appointment as a Reserve officer must meet the requirements, qualifications, and standards necessary for appointment, to include standards regarding the individual's character and conduct. Moreover, an appointment to the RASL is a privilege and not a right. As such, officers with adverse information or alleged adverse information may not have their names forwarded for a RASL appointment if the Service finds the officer unqualified. 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. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting further corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In consideration of the Secretary of the Navy's finding that you were qualified for promotion after DC (M&RA) denied your acceptance to the RASL, the Board determined that the Secretary of the Navy's decision could have influenced DC (M&RA)'s RASL decision. The Board noted that you are currently working with an OSO and determined that you must exhaust your administrative remedies to request reappointment by continuing to work with an OSO and Headquarters Marine Corps by requesting an exception to policy in accordance with the Marine Corps Recruiting Command Officer Commissioning Manual.

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,

4/24/2024

