



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. 10387-23
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 April 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 5 March 2024, advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL), which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove the 30 October 2018 and 10 March 2020 Administrative Remarks (Page 11) entries. The Board considered your contention that the 30 October 2018 entry misstates duties applicable to the disclosure of dependents during the recruiting process. You also contend "complicity" is not a Uniform Code of Military Justice (UCMJ) offense and use of the word unjustly attempts to implicate you in a criminal act without directly stating so. You claim the counseling entry unjustly suggest that you participated in a criminal act without substantiating a UCMJ violation. You also claim a "poolee" that enlisted during June 2018 committed suicide during July 2018. During recruitment, the "poolee" failed to disclose stepchildren who were not financially dependent upon him. Further, the Marine Corps Recruiting Command order states it is the responsibility of the applicant to identify dependents. Regarding the 10 March 2020 counseling entry, you contend it errs by substantiating an Article 92, UCMJ violation when ALMAR 008/17 is not punitive.

The Board, however, substantially concurred with the AO that your counseling entries are valid. In this regard, the Board noted that you were counseled on 30 October 2018 for your complicity in the fraudulent enlistment of a poolee into the Delayed Entry Program by failing to verify dependency status. On 10 March 2020, you were counseled for violating Article 92, UCMJ, specifically, ALMAR 008/17 based upon an Inspector General (IG) complaint that substantiated misconduct for posting disparaging comments on social media. The Board also noted that you acknowledged the counseling entries and elected not to submit a statement. The Board determined that the contested counseling entries were written and issued pursuant to the Marine Corps Individual Records Administration Manual (IRAM) and paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN). Specifically, both counseling entries provided written notification concerning your deficiencies and afforded you the opportunity to submit a rebuttal. The 10 March 2020 counseling entry provided specific recommendations for corrective action, where to seek assistance, and consequences for failure to take corrective action. Moreover, your Commanding Officer (CO) signed both entries, demonstrating that he/she determined that your conduct was a matter essential to record as it was his/her right to do.

Concerning your 30 October 2018 counseling entry, the Board determined that, as the fact finder, your CO was best situated to weigh the available evidence and circumstances related to your misconduct. Other than your statement, the Board found no evidence regarding the specifics of your case. Moreover, counseling entries are administrative in nature and do not require a UCMJ violation. The Board found no error in your CO's use of the term "complicity" as the term defines your involvement in the fraudulent enlistment of a poolee.

Concerning your 10 March 2020 counseling entry, the Board noted that ALMAR 008/17 provides guidance for Marines concerning unofficial online activity that has an adverse effect on good order and discipline or brings discredit upon the armed forces. The ALMAR also provides that Marines must never engage in commentary or publish content on social networking platforms or through other forms of communication that harm good order and discipline or that bring discredit upon themselves, their unit, or the Marine Corps and this type of conduct may be punishable under Article 92, UCMJ. The Board also noted your statement, in which you accepted responsibility for the post and admitting that you became emotional and should have deleted the entire post. The Board substantially concurred with AO that your conduct constituted a violation of Article 92, specifically, Dereliction of Duty. Based on the totality of the evidence, the Board determined that your CO relied upon sufficient evidence, including a substantiated Inspector General complaint when determining that your counseling entry was warranted.

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 removal of either counseling entry 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,

5/14/2024

