



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

█
Docket No. 476-24
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 application on 20 June 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 28 February 2024 Advisory Opinion (AO) provided by Headquarters Marine Corp (JPL), which was initially emailed to your counsel on 5 March 2024 to allow you an opportunity to provide a rebuttal response. Unfortunately, after a reminder email on 22 April 2024 and approval of your counsel's April 2024 request for an extension until 13 May 2024, a rebuttal was not received, and your case was prepared for presentation to the Board.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove all derogatory material related to the █ decision letter of 2 October 2020¹ and "any mention or reference to the

¹ The referenced letter is signed by the █ for Manpower and Reserve Affairs (█ (M&RA)), subj: Termination of Administrative Proceedings ICO [Petitioner], dated 2 October 2020. █ (M&RA), as the Show Cause Authority, determined that the information provided, while adverse, did not warrant processing for administrative separation. He directed the case be closed but also notified you that the "[a]dverse material concerning this matter will be included in your Official Military Personnel File."

[Command Investigation] or Page 11 or Report of Misconduct” from your Official Military Personnel File (OMPF).

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

Before applying to this Board, you exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

You departed from ██████████, ██████████ on 30 November 2019 for your deployment as an Individual Augment (IA) in support of ██████████ ██████████ (██████████). You arrived in ██████████, ██████████, on 1 December 2019 and then proceeded to ██████████, ██████████ on 3 December 2019, arriving the same day.

On 26 December 2019, you emailed the Defense Finance and Accounting Service (DFAS) to open a Savings Deposit Program (SDP) account with the initial amounts of \$4000 and \$6000.

On 14 March 2020, you emailed DFAS stating your account did not reflect the two SDP deposits. In a reply email on 18 March 2020, DFAS informed you that the \$6000 voucher had been processed but the \$4000 voucher had been returned because you had not been in the ██████████ (██████████) Area of Responsibility (AOR) for at least 30 days at the time of the deposit.

On 19 March 2020, you replied to DFAS via email stating the endorsement of 22 November 2019² was “supposed to reflect [your] arrival into ██████████. [You] have that endorsement and [are] still waiting for it to update on MyPay, etc.” In its reply, DFAS informed you that it utilizes the dates in Marine Corps Total Force System (MCTFS), not reporting endorsements, as verification. Further, they stated you would have to ask your administrative personnel in-country to fix the MCTFS date in order for DFAS to allot the \$4000 into your SDP account. Subsequently, you forwarded the DFAS email to Corporal RR asking for an update changing MCTFS to reflect the 22 November 2019 arrival date. In a subsequent reply to an email sent from ██████████ to both yourself and ██████████ you sent ██████████ an email with the 22 November 2019 endorsement attached stating, “[t]he entry into ██████████ should be 22 November 2019. Attached is the finalized/updated endorsement.”

On 23 March 2020, the Officer in Charge of the Administration Cell emailed you asking who had generated the 22 November 2019 reporting endorsement because your travel itinerary stated you arrived in ██████████ on 1 December 2019. In your reply email you

² In counsel’s brief, you provided your explanation of the timeline. By your own explanation, you noted that “[i]n the dilatory processing of Petitioner’s reporting endorsement to his orders” Gunnery Sergeant M endorsed your orders with the wrong reporting date of 22 November 2019 versus 30 November/1 December 2019. You further stated that on 17 January 2020 he sent you the erroneous ██████████ reporting endorsement which you questioned. Further, you noted Gunnery Sergeant M admitted his dereliction for signing an erroneous endorsement without fact-checking.

stated, "I believe November 30th is supposed to be the day...I think I accidentally shared the 22 November 2019 endorsement that [was] originally shared in error."

On 4 March 2020, Chief of Staff, [REDACTED], convened an Army Regulation 15-6 investigation. The investigation concluded you made false official statements on six occasions. On 14 May 2020, Commander, [REDACTED], forwarded the investigation to Commander, [REDACTED] ([REDACTED]), for review and execution of any action deemed appropriate.

On 19 May 2020, the Commander notified you of his recommendation that you be administratively separated from the Marine Corps with a general, under honorable conditions, characterization of service, due to your false official statements about the date of your arrival in the [REDACTED].

On 20 May 2020, the Commander, [REDACTED], issued you an Administrative Remarks (Page 11) entry counseling you concerning your violations of Article 107 (False Official Statements) and Article 124 (Frauds against the United States) of the Uniform Code of Military Justice. The entry is signed by yourself and the [REDACTED] Commander. You availed yourself of the opportunity to submit a written rebuttal, and on 29 May 2020, you submitted your rebuttal which has been attached to the Page 11 entry within your OMPF. In your rebuttal, you "vehemently den[ie]d falsifying any official document, defrauding the government, or knowingly and intentionally misrepresenting [your] arrival date in [REDACTED] AOR." Further, you emphasize that you "repeatedly relied upon the [REDACTED] experts to guide [you] on proper payment and entitlements, especially after [you] provided them with all information. [I] am not a trained finance officer, nor a manpower professional." Additionally, you argue that the investigation, which was used as the basis for all factual conclusions, was "procedurally deficient and factually unreliable in material and controlling aspects." In closing, you requested to be retained in the Marine Corps.

On 1 June 2020, Commander, [REDACTED], submitted a Report of Misconduct (ROM)³ to [REDACTED] (M&RA) per paragraph 010604 of MCO 5800.16 (LSAM) Volume 15 (Officer Misconduct and Substandard Performance of Duty). Commander, [REDACTED], recommended Petitioner be separated via notification procedures for misconduct with a general, under honorable conditions, characterization of service because "[his] lack of integrity in making repeated false official statements in an effort to defraud the U.S. government demonstrates that he does not possess the moral authority to lead U.S. Marines." On 2 June 2020, you acknowledged receipt of the ROM and indicated your desire to submit a statement.

On 5 June 2020, Commander, [REDACTED], submitted his recommendation for administrative separation, to the Secretary of the Navy, via [REDACTED] (M&RA) and JPL. In the closing paragraph, the Commander stated that "[a]fter considering [Petitioner's] matters, I continue to recommend that he be administratively separated" with a general, under honorable conditions, characterization of service.

³ Included as enclosures were the 19 May 2020 Page 11 entry and your rebuttal response of 29 May 2020.

On 29 July 2020⁴, you submitted, through counsel, a response to the ROM. In your response, you contend “[t]he investigation itself was inadequate and the administrative actions afterward were defective and violated the due process rights⁵ of [Petitioner].” Further, you contend it was error for you to be notified of administrative separation before “[you] even had a chance to respond to the IRAM counseling, let alone the report of misconduct.” At the conclusion of the lengthy response which included numerous enclosures, to include 16 letters of character, counsel again emphasized that mistakes are made every day and not every mistake indicates criminal intent and “nothing in [Petitioner’s] background or history indicates that [Petitioner] would engage in some sort of unethical behavior in order to save a few dollars, in fact it’s just the opposite.”

In his endorsement of 4 August 2020, Commander, [REDACTED], after carefully considering your 29 July 2020 response to the ROM, in addition to the matters submitted 29 May 2020 in your rebuttal to the Page 11, continued to recommend your administrative separation with a general characterization of service.

On 18 September 2020, you submitted, through counsel, a “complaint in processing” memo to [REDACTED] (M&RA), Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the SECNAV. In your complaint, you argued that because the administrative actions and processing were initiated out of order “that both interfered with and violated [your] due process rights and [your] liberty interests,” the processing must be reinitiated to protect your rights and “the validity of the institutional process.”

By memorandum of 2 October 2020, [REDACTED] (M&RA) notified you that your case had been closed and the administrative proceedings terminated. Finding that the information was adverse, although not warranting administrative separation processing, he also notified you that the adverse material would be included in your OMPF.

Contentions

The Board carefully considered your statement and supporting attachments. Specifically, the Board considered the following summarized contentions:

(1) You submitted a request⁶ to Headquarters Marine Corps to remove the same adverse material and part of the adverse material was removed in June 2023.

(2) The adverse material is based upon a defective investigation, an administrative

⁴ In a memorandum for the record dated 17 June 2020, your delay in responding to the ROM was memorialized. On 16 June 2020, the Assistant Staff Judge Advocate contacted you inquiring about the status of your response. You forwarded an email explaining that you had attempted to forward matters on 9 June 2020 but a typographical error in the email address prevented your response from going through. In the same email, you indicated you wanted to rely on your 29 May 2020 rebuttal to the Page 11.

⁵ In the legal analysis, you specifically argued the investigation was deficient because: 1) there was no intentional misconduct; 2) there was enough inattention to detail to spread around some responsibility/culpability; and 3) naivety as to administrative processes and pay processes does not equal misconduct.

⁶ The Board noted you did not provide any details on what adverse material was removed nor did you provide a copy of your request for removal.

support section's failure in its mission, and a rush to judgment without consideration of your impeccable character.

(3) You have a demonstrated history of outstanding performance and outstanding character. Your record is clear of derogatory info except the Page 11 and accompanying documents. Even with the derogatory material, you have successfully promoted, been selected for highly competitive programs, and ranked at the top of your peer group.

(4) You made unintentional mistakes due to haste, operational tempo, and perhaps some inattentiveness. However, you never intended to mislead anyone about your reporting date.

(5) The investigation, conducted in a kinetic combat zone with high operational tempo, did not receive the highest caliber of investigating officer (IO) nor the highest level of attention to detail. The investigation is fatally flawed and defective.

(6) It is clear to any reasonable reader of the emails that [REDACTED] – [REDACTED] ([REDACTED]) is administratively a mess and it's an injustice to hold a new and first-time deploying officer on an IA billet to a higher standard of knowledge as to how reporting dates and reporting endorsements are processed than the experts who generate them.

(7) The following deficiencies were noted in the investigation:

(a) [REDACTED] testimony is full of speculation, to include speculation about the intent of one of his subordinates, [REDACTED]

(b) [REDACTED] is an indispensable witness to this investigation, but he was unable to be interviewed by the IO.

(8) The following fatal flaws in the Investigation findings materially prejudiced you:

(a) The IO failed in his required duties and lost the presumption of regularity by failing to follow the Army Regulations and the appointment order. The IO cites no supporting facts and no exhibits as specifically required by the Army regulation and his appointing order.

(b) The IO should state why the finding he made is more credible and probable than the other reasonable conclusion(s) when the evidence in the record may reasonably support alternative findings. The appointing authority also required that if evidence conflicts, the IO should make a finding as to which evidence is more credible and why it was believed to be more credible. The opinion that you lied or intentionally misrepresented a material fact is not supported in the investigation, and the conflict between you statement and any other evidence that might intimate otherwise is not resolved as required by the appointing order. Further, the IO does not cite to any exhibit that supports such intent which is fatal to the finding as well.

(c) The IO states you never gave the correct date until the investigation began but there is no cite to supporting facts or exhibits.

(d) The IO lists the dates/times in the provided itinerary only – no findings were made as to the actual dates of movement. Nothing in the investigation reports when you actually arrived in [REDACTED], except your statement.

(9) Because there was never an allegation of fraud (Article 124), as enumerated on the Page 11, the Page 11 is defective, erroneous and unjust. You were never alleged to have presented a false claim.

(10) Providing incorrect information without criminal intent is not a false official statement under Article 107 of the UCMJ. There is no evidence of intent. The SDP is not sufficient motive to lie. The difference between arriving in [REDACTED] on 30 November or 1 December – when opening a SDP and depositing money – is so insignificant there is literally no reason anyone would lie about it. Further, the tax exclusion was out of your hands, and the remainder of entitlements are de minimus and provide no motive.

After a thorough review of your submission, the Board, substantially concurring with the AO, determined there was insufficient evidence of an error or injustice warranting your requested relief. The Board, in its independent review of the record, concurred with the AO's analysis there is sufficient evidence in the record to show you knew the 22 November 2019 reporting endorsement you received from the [REDACTED] was false, yet you kept using that reporting endorsement to purposely mislead others. Further, the Board, when considering your argument that the SDP amount was nominal and not worthy of fabrication, determined the amount to be gained was irrelevant. The Board also noted your actions of sending numerous emails in January, February, and March of 2020, bely your argument that motive did not exist. Lastly, the Board carefully reviewed the adverse documentation within your OMPF and determined both the ROM and Page 11 formal counseling are valid. The Board determined you have provided insufficient evidence of error or injustice to overcome the presumption of regularity that has attached to the [REDACTED] Commander's conclusion you committed misconduct which required documentation in a ROM and formal counseling. When stepping back to look at your overall conduct, even in light of it being your first deployment, as a Naval Academy graduate and officer of Marines, the Board concurred with the chain of command's determination that your lack of integrity in making repeated false official statements was an effort to defraud the government.

Therefore, based on the available evidence, the Board concluded there was insufficient evidence demonstrating a material error or injustice to overcome the presumption of regularity attached to the official actions taken by your chain of command. Ultimately, the Board concluded your misconduct was properly documented and filed in your OMPF. 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,

7/5/2024

