



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. 2453-24
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 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.

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 13 December 2022 Command Investigation, undated Administrative Remarks (Page 11), and 20 January 2023 Report of Misconduct (ROM). The Board considered your contention that you suffered an injustice as the result of a deficient command investigation that had several inconsistencies according to the Manual of the Judge Advocate General (JAGMAN). Specifically, the JAGMAN states “[w]hen an investigator takes an oral statement, it should be reduced to writing and signed by the witness or certified by the investigator to be either an accurate summary or verbatim transcript.” You claim that neither of these things occurred in any of the summary of interviews. You also contend the findings of fact are incorrect due to inconsistencies. Additionally, you contend the ROM identifies Uniform Code of Military Justice (UCMJ) violations of Article 128 and 128b, while the counseling entry mentions a completely different violation—Article 133. You assert that the glaring inconsistency did not allow you to sufficiently defend yourself through rebuttal,

and you could not properly seek justice if you did not know what you were suspected of violating through this process. You also assert that according to Article 93, UCMJ and 3-17-1 of the Military Judge's Benchbook, when viewed objectively, under all the circumstances, this treatment is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose. Additionally, although an administrative action, agency actions must be based upon articulable standards and explained sufficiently to allow for effective review. You cite *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404-06 (D.C.Cir.1995).

The Board noted the Command Investigation (CI) and Investigating Officer's (IO) opinion that your actions on the night of the incident, specifically, lifting the mattress and causing your wife to roll off the bed into a nightstand which caused injuries to her upper arm and ribs, constituted an assault consummated by a battery, and your actions met the elements of domestic violence. The Board also noted on 3 December 2022, your wife sought medical treatment for her injuries and was diagnosed with blunt trauma to the right arm and right lateral chest. The IO opined that the events depict a series of unfortunate and arguably impudent actions and reactions that resulted in unintended minor physical injury. The IO concluded that your actions were substantiated violations of Article 128 and 128(b), UCMJ. The Board determined that the CI is valid and found no evidence that the IO acted contrary to the JAGMAN, nor is there any evidence that the investigation failed to meet the standard of legal sufficiency. Moreover, the Board found no evidence that the witness statements were not signed by the witness or certified by the investigator to be an accurate summary or verbatim transcript, and you provided none.

Concerning your counseling entry, the Board determined that you were properly counseled in accordance with paragraph 3005 of the Marine Corps Individual Records Administration Manual (IRAM). In this regard, the Board noted that you were issued a Page 11 entry counseling you for Conduct Unbecoming an Officer based on the CI findings that you engaged in a domestic dispute with your spouse that, albeit unintentional, resulted in physical injuries to her. The IRAM authorizes Commanders make entries on the Page 11 that are essential to document an event in a Marine's career for which no other method of recording exists and as long as the information is of permanent value to the Marine's career and cannot be documented anywhere else. The Board also noted that you acknowledged the counseling entry and elected to submit a statement. Moreover, the entry was signed by the Commanding General (CG), and he determined that your misconduct was a matter essential to record, as it was his right to do.

According to the Legal Support Administration Manual, upon receipt of credible information, 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 the misconduct. In all cases, in which the command addresses the officer's misconduct administratively, a copy of the officer's formal counseling or adverse fitness report will be included as an enclosure to the ROM. Additionally, all ROM must include a copy of the investigation upon which the substantiation of the misconduct was based. Based upon the CI findings, the CG, 1st Marine Division determined that misconduct occurred, and properly documented your misconduct in a ROM. The Board determined that the GCMCA acted reasonably based upon credible information and was within his discretionary authority when he determined that you committed misconduct.

The Board noted that both the counseling entry and ROM afforded you the opportunity to submit a statement and you availed yourself of those opportunities. On 13 February 2023, you submitted a rebuttal to the counseling entry and ROM. Then, on 27 April 2023, through counsel, you submitted another rebuttal to the counseling entry and ROM. Your rebuttal statements addressed the validity of the UCMJ Article 128, 128(b), and 133 violations, you provided a timeline of events from your perspective, noted perceived CI deficiencies, and provided legal arguments in defense of your case. The Board found your rebuttals comprehensive and indicate that you had a thorough understanding for the basis of the UCMJ violations. Thus, the Board determined that you were not prevented from providing a sufficient defense. Concerning your contention that the counseling entry and ROM constituted a violation of Article 93, UCMJ and the Military Judge's Benchbook. The Board found no evidence of abuse of authority, cruelty, oppression or maltreatment toward you by any person in your chain of command. The Board determined that any administrative action documenting substantiated misconduct and any consequences resulting from that action are not violations of Article 93, UCMJ or 3-17-1 of the Military Judge's Benchbook. The Board determined that your reference to *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404-06 (D.C.Cir.1995) lacks merit. The Board noted that *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404-06 (D.C.Cir.1995) sought reversal of the dismissal of their petitions by the Army Board for Correction of Military Records that refused to waive the limitations period for applications for upgrades of their discharge classifications. The Board determined that the administrative standard referenced in that case does not apply to the circumstances of your case. Counseling entries and ROM are administrative actions and do not require the same standard of proof as nonjudicial punishment or court-martial convictions. As such, 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 and thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the documents in question 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

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