



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

█
Docket No. 2526-24
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 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 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 your 24 May 2023 Administrative Remarks (page 11) 6105 and associated Page 11 Promotion Restriction counseling entries. The Board considered your contention an administrative separation (ADSEP) board found no basis and recommended that you be retained.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued two 6105 entries counseling you for violation of Article 92, of the Uniform Code of Military Justice (UCMJ). Specifically, MCO 5354.1F, based upon the findings of a Command Investigation dated 7 April 2023 which substantiated incidents of sexual harassment. The Board also noted that you signed the counseling entries and you provided a rebuttal statement. However, the Board determined that the contested 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, thus determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

In regards to your contention that the ADSEP Board found no basis and recommended you for retention, the Board noted that the ADSEP Board's findings do not automatically negate the Commanding Officer's (CO) conclusion that you committed misconduct. Moreover, the Board determined that the ADSEP board is a separate process with the fundamental purpose of determining your suitability to serve on the basis of your conduct and ability to meet and maintain the required standards of performance and does not determine guilt or innocence. Finally, the Board noted that the incident of sexual harassment was substantiated by a Command Investigation, as indicated by the CO in your 6105 counseling entry. Thus, the Board determined that the ADSEP board's findings do not invalidate the counseling entries.

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 counseling entries 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,

4/1/2024

