



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

█
Docket No. 2934-24
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 13 August 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 3 May 2024, advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 6 June 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 remove all derogatory material related to The Basic School (TBS) cheating incident. The Board considered your contention that you were wrongly accused of cheating. The command accused you of using a student handout to develop answers on an exam although they had no evidence. You also contend you were not read your rights, and two superior officers were in the room in an attempt to make you self-incriminate. You claim that you tried to seek legal counsel but Base legal was out for two weeks. After being dropped from training, you received legal counsel and emailed your statement to the Investigating Officer (IO), the IO routed the statement through the chain of command, but you never saw it again. You also claim the Commanding Officer (CO) attempted to impose non-judicial punishment

(NJP); however, you refused because you wanted to be heard by an unbiased authority. After refusing NJP, you received a counseling entry signed by the CO, the CO never counseled you, and you were told you had to sign the counseling entry if you wanted to submit matters. You assert that you submitted your response with enclosures; however, after screening your official record, your record does not include the enclosures.

The Board noted that your company of TBS Students took a computer-based exam. Because of Wi-Fi issues, the exam was taken in the barracks instead of a classroom. Students were instructed not to use student handouts, study guides, course materials, test preparations materials or study aids while taking the exam. During grading, an instructor noted that your answers were nearly identical to material in a student handout. The CO directed a command investigation (CI) into allegations of cheating. Prior to the initiation of the CI, the company Executive Officer (XO) informed you that you were suspected of cheating and gave you a blank Suspect's Rights Acknowledgment/Statement to fill out and return by 1600 the same day. The next day, the IO informed you of the allegations and again informed you of your rights, and you declined to make a written statement.

The Board noted that the CI concluded that you violated the TBS Academic Integrity Policy. The findings revealed that 42 percent of your answers for question 36, 69 percent of your answers for question 38, and 76 percent of your answers for question 39 were verbatim from a student handout. Pursuant to paragraph 3005, Marine Corps Individual Records and Administration Manual (IRAM), on 4 January 2023, you were issued a page 11 entry counseling you for violating Uniform Code of Military Justice (UCMJ), Articles 92, 107 and 133 by violating the Academic Integrity Policy and using a student handout as a reference during "Written Exam III." The counseling entry also noted that after being shown the highlighted answers, which matched the student handout, you again denied violating the policy. The Board also noted that you acknowledged the entry and, in your statement, you denied cheating, complained that the Suspect's Right Acknowledgement/Statement provided by the XO did not contain the suspected offenses, and asserted that you did not have a chance to consult with the defense counsel until after the investigation was complete. The Board determined that the contested counseling entry was written and issued according to the IRAM. Specifically, the entry provided written notification concerning your deficiencies and afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entry, and determined that your misconduct was a matter essential to record; as it was his/her right to do.

The Board noted that the CO documented your misconduct in a Report of Misconduct (ROM) and recommended that the case be closed. The Board also noted that the Legal Support Administration Manual requires instances of substantiated misconduct be reported to the Show Cause Authority. The Deputy Commandant, Manpower and Reserve Affairs, as the Show Cause Authority for the Marine Corps reviewed your case and determined the information, while adverse, did not warrant processing for administrative separation and directed the closure of the case with inclusion of all adverse material in your record.

The Board substantially concurred with the AO. In this regard, the Board determined your belief that your test answers were not similar to the student handout is not sufficient to override the findings in the CI and the CO's decision to document his determination that you violated policy.

The Board also determined that the CO relied upon sufficient evidence, that included a CI that documented substantial percentages of your answers that were verbatim from an unauthorized resources, when determining that your counseling and a ROM were warranted. Moreover, the Commanding General, █
█ reviewed your case and approved the facts, opinions, and recommendations of the IO.

Concerning your Article 31, UCMJ Rights, the Board determined that any purported errors are immaterial. The Manual for Courts Martial (MCM) prevents the admission of unwarned statements into evidence at court-martial. This rule has limited applicability to administrative actions and does not prevent the command from using statements to make administrative determinations. Even if there was an error, MCM limits the introduction of improperly warned statements into evidence at a court-martial, not NJP or adverse administrative actions.

Concerning the purported missing enclosures, the Board noted that the missing enclosures are the same enclosures submitted in your response to the counseling entry. After a review of your record, the Board noted that the Suspect's Rights Acknowledgment/Statement, Signal Message, and Character References included as enclosures in your rebuttal dated 17 January 2023, are present in your record. Finally, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board 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 corrective action. 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,

9/11/2024

█