

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 2950-24 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 9 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 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 for reconsideration to remove your 24 May 2023 Administrative Remarks 6105 (page 11) counseling entry and associated rebuttal statement. The Board considered your contention that you were found not guilty during an administrative separation (ADSEP) proceeding and retained.

However, the Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for violating Article 92 of the Uniform Code of Military Justice (UCMJ). You signed the counseling entry and elected to submit a statement which could be found in your official record. The Board determined that the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling entry 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. Finally, the Board also noted the CO substantiated the allegations of violation of Article 92 through a Battalion Investigation, as referenced in the adverse fitness

report for the reporting period ending on 31 July 2023. Thus, the Board determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

Regarding your claim that you were found not guilty by the ADSEP Board, the Board noted an administrative separation board functions as an administrative rather than a judicial body. Accordingly, in the board's proceedings, other than with respect to privileges, the strict rules of evidence governing trials by court-martial are not applicable. Therefore, the ADSEP Board's finding of no basis for separation 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 your guilt or innocence. Thus, the Board determined that the ADSEP board's findings do not invalidate the counseling entry and that the allegations were properly adjudicated by your command. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling entry 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.

