



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. 5014-24
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 May 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.

The Board carefully considered your request to remove the 6 June 2019 Administrative Remarks (Page 11) entry, your rebuttal statement, and fitness report for the reporting period 7 August 2018 to 29 April 2019. The Board considered your contentions regarding the command investigation (CI), and the improper use of the CI results as the sole basis for the Report of Misconduct (ROM). You also contend there is no evidence to support the allegations that you knowingly violated Uniform Code of Military Justice (UCMJ) Articles 92 and 133. You further contend the command still chose to accuse you of a violation of Article 92, UCMJ, and elected to use SECNAV M-5310.36 simply because it is a general order and required the lowest quantity of proof. Additionally, you were accused of violating Article 133, UCMJ with no basis, there is no new offense or facts alleged to support this charge other than sending the data. You claim that you sought the approval of a Chief Warrant Officer 3 (CWO3) and it appears you both were unclear about the proper way to transmit information during the exercise and many Marines were unaware of the classification of level of information, as well as the new "PPEDS" policy. You also claim the investigation determined there was no loss or compromise of classified information and it was negligent handling and safeguarding of classified information.

The Board noted that pursuant to paragraph 3005 the Marine Corps Individual Records Administration Manual (IRAM), you were issued a Page 11 entry counseling you for violating UCMJ, Articles 92 and 133 by willingly and knowingly sending secure internet protocol routing network (SIPRNet) access information via a non-secure, unofficial means. The Board also noted the Commanding General, ████ ████ relied upon the CI into the possible loss or compromise of information classified SECRET and the Investigating Officer's (IO's) findings that you willingly disseminated SIPRNet access information via non-secure, and unofficial means. The Board determined that the contested counseling entry was written and issued in accordance with the IRAM. Specifically, the counseling entry provided written notification concerning your deficiencies and it afforded you the opportunity to submit a rebuttal. The Board noted, too, that you acknowledged the counseling entry and in your statement, you admitted believing the information to be potentially classified. In an effort to declassify the information, you disguised the default password in a way that would be recognizable to the members of the "DASC". After confirmation that the information was unclassified and able to be sent via text message, you forwarded the information. Moreover, your CG signed the entry, and determined your misconduct was a matter essential to record, as it was his right to do.

Concerning the violations of UCMJ, Articles 92 and 133, the Board determined the CG acted within his discretionary authority and relied upon sufficient evidence when determining that you violated the UCMJ. A counseling entry is an administrative action, requires the Commander's determination that misconduct occurred and the misconduct is deemed essential to document. Counseling entries do not require the same standard of proof as non-judicial punishment or court-martial, therefore, the IRAM does not require a specific UCMJ violation when issuing a counseling entry. Nonetheless, a violation of Article 92, UCMJ applies to any person subject to the UCMJ that violates or fails to obey any lawful general order or regulation.

Concerning your knowledge of the "PPEDS" policy, the Board determined that your knowledge of the policy, regulation or lawful order is not required. According to the *Manual for Court Martials* (MCM) (2019 ed.), knowledge of a general order or regulation need not be alleged or proved as knowledge is not an element of this offense (Article 92) and a lack of knowledge does not constitute a defense. Article 133, UCMJ is conduct unbecoming an officer. The nature of Article 133 is conduct that is likely to seriously compromise an officer's standing. Moreover, "Conduct in violation of this article is action or behavior in an official capacity that is dishonoring or disgracing the person as an officer, seriously compromises the officer's character, or seriously compromises the person's standing as an officer. This article includes misconduct that approximates, but may not meet every element of, another enumerated offense. An officer's conduct need not violate other provisions of the UCMJ or be otherwise criminal to violate Article 133. The absence of a "custom of the service," statute, regulation, or order expressly prohibiting certain conduct is not dispositive of whether the officer was on sufficient notice that such conduct was unbecoming." The Board also determined that the inclusion of UCMJ, Articles 92 and 133, is an error or injustice.

Concerning your contentions regarding the CI, the Board found no evidence that you were not afforded due process nor any evidence the investigation did not meet the requirements for legal sufficiency and you provided none. The Board determined that your Report of Misconduct

(ROM) was submitted and properly included in your official record in accordance with the Marine Corps Legal Support Administration Manual (LSAM). In this regard, the LSAM requires a ROM “in all cases of misconduct . . . where the first GCMCA in the chain of command determines that the officer committed the misconduct.” The Board noted that you acknowledged your Article 31, UCMJ Rights and suspected offense(s), and you voluntarily provided a written statement. The Board also noted that your chain of command reviewed the CI, concurred with the findings and recommendations of the IO, and recommended appropriate disciplinary action. The Board thus determined that the CG’s reliance upon the CI was not in error.

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. The Board thus 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.

Concerning your request to remove your fitness report, the Board determined that you have not exhausted your administrative remedies. In accordance with the Marine Corps Performance Evaluation System Manual, the Performance Evaluation Review Board (PERB) is the initial agency for fitness report appeals; therefore, you must submit your request to the PERB prior to this Board taking any action on your request.

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,

6/6/2024

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Deputy Director

Signed by: █