



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. 5020-24
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 14 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 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 24 February 2023 Administrative Remarks (Page 11) entry and rebuttal statement. The Board considered your contention that the administrative process leading to your relief of command for cause never allowed you to properly defend yourself. You claim that you did not see the allegations made against you and you only received the investigation after you were relieved of command. You also contend the Commanding General (CG) never spoke with you about the topic until after he decided to relieve you of command. By using the administrative process, the CG disallowed you from contesting the action including requesting that a Board of Inquiry (BOI) be convened.

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 misconduct substantiated in a Command Investigation. The Board also noted that you acknowledged the counseling entry and, in your statement, you denied making the alleged statement, argued that

the inclusion of the entry was conducted in a manner that disallowed you to defend yourself, and was issued contrary to the weight of the evidence. 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. Moreover, your Commanding General (CG) signed the entry, and determined your misconduct was a matter essential to record, as it was his right to do.

The Board noted the statements you provided regarding the incident during your visit to a Recruiting Substation and the statement by another officer counseled by the same CG, but found the statements unpersuasive. The Board determined that the CG acted within his discretionary authority and relied upon a preponderance of evidence that included a command investigation. As such, he was best situated to weigh the facts and circumstances of your case when deciding to relieve you from command and to document your relief in a counseling entry. The Board also determined that you were afforded due process and availed yourself of the opportunity to submit a statement, which is properly filed in your official record. Moreover, the Marine Corps Performance Evaluation System Manual states, “a relief for cause should be documented via a page 11 formal counseling.”

The Board further determined that BOI’s are convened to receive evidence and make findings and recommendations as to whether an officer on active duty should be retained on active duty. You are not entitled to a BOI for the purpose of presenting arguments in opposition of a properly adjudicated administrative action. The Board determined the CG’s decision not to convene a BOI is not an error or injustice. 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.

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,

5/31/2024

