

DEPARTMENT OF THE NAVY

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

> Docket No. 6240-24 Ref: Signature Date

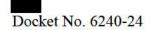
Dear Petitioner:

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 16 July 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 28 March 2023 Administrative Remarks (Page 11) 6105 counseling entry and associated rebuttal. The Board considered your contentions that the counseling is administratively incorrect, contradicts the intent of paragraph 6105 of the Marine Corps Separations and Retirement Manual (MARCORSEPMAN), and was issued unjustly. You claim you were legally separated from your wife during 2017, and your wife filed for divorce during 2022. You also claim that during March 2023, you were notified that you were the subject of an Inspector General (IG) complaint.

The Board noted the Preliminary Inquiry (PI) into the facts and circumstances surrounding an IG complaint. The Investigating Officer (IO) found that you were in multiple intimate relationships at the same time. For a four-month period, you were married, engaged, and dating two separate women. Your actions caused distress for multiple women at the same time and drove one woman to take her own life. Additionally, you used your billet and your responsibilities, as excuses to cover for the multiple relationships and your unresponsiveness during those relationships. The Board also noted that the Commanding Officer, reviewed the investigation and concurred with the IO's findings, opinions, and recommendations regarding a violation of Uniform Code of Military Justice (UCMJ) Article 134.



Pursuant to paragraph 6105 of the MARCORSEPMAN, you were issued a 6105-entry counseling you for being the subject of a command investigation that substantiated extramarital affairs between December 2019 and April 2022. Additionally, the misconduct reflected poorly on you, it undermined the trust and confidence in you as a leader and detracted from good order and discipline. The Board also noted that you acknowledged the entry and, in your statement, you asserted that the evidence was nothing more than a personal attack against you based solely on emotion and hard feeling, and you were not charged with extramarital sexual conduct. The Board determined the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the 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 CO signed the entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

According to the *Manual for Courts-Martial* (2023 ed.), a marriage exists until "it is dissolved in accordance with the laws of a competent state or foreign jurisdiction" and legal separation "is an affirmative defense to the offense of extramarital sexual conduct as long as the accused was legally separated by order of a court of competent jurisdiction." Thus, the affirmative defense does not apply unless all parties to the conduct are either legally separated or unmarried at the time of the conduct. In your case, the Board found sufficient evidence that you were married during November 2008 and County Court legally dissolved your marriage during April 2022. In consideration of the evidence you provided, the Board found no evidence, other than your statement, that you were legally separated at the time of your sexual relationships with other women. The Board also determined that your CO acted within his discretionary authority and relied upon a preponderance of evidence, that included a PI, when determining that you committed misconduct. 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.

