



**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. 6358-24  
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 8 October 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, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered the 19 October 2022 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL) and your response to the AO.

The Board carefully considered your request to vacate your guilty plea and remove your 29 June 2015 non-judicial punishment (NJP), Punitive Letter of Reprimand (PLOR), and all references to the charges against you. You also request to remove the Board of Inquiry (BOI) referral, restore your retirement pay grade to colonel (Col/O-6), and payment of back pay and benefits. Additionally, you request to correct your narrative reason for separation (Unacceptable Conduct). The Board considered your statement regarding your extramarital relationship and

civil court issues related to a restraining order. You claim that your struggle to achieve a clean break with your paramour was impaired by undiagnosed Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and your undiagnosed mental wounds at the time impaired your decision-making. You contend:

(1) Plea deals must be sufficiently established by the facts contained within the record, independent of any plea by the accused. If a plea is not sufficiently established by the facts of the record, it is improvident and must be vacated. In *United States v. Jonsson*, the Coast Guard Court of Criminal Appeals vacated both a plea agreement to a charge of adultery, as well as the charge itself, as improvident because there were insufficient facts in the record to independently establish that the necessary legal element of prejudice to good order and discipline had been met.

(2) There was not a preponderance of the evidence to satisfy the necessary elements for an Article 133, UCMJ violation for conduct unbecoming of a gentleman. Though you pleaded guilty, a guilty plea can still be overturned if there was insufficient evidence to establish the necessary elements of the charge at the time. The charges under Article 133, UCMJ were based purely on the intimate emails and texts exchanged between you and Col M (paramour). This was a consensual sexual relationship between two adults of equal military rank.

(3) There was not a preponderance of the evidence to satisfy the necessary elements for an Article 134, UCMJ violation for adultery. You pleaded guilty to adultery for your sexual relationship with your paramour. You are not contesting that the first two elements are true and have repeatedly expressed remorse for your mistake. However, the third element is just as necessary as the other two and is unable to stand on its own based on the record. Adultery, under the Manual for Courts-Martial (MCM 2012 ed.), has three necessary elements:

- (a) That the accused wrongfully had sexual intercourse with a certain person;
- (b) That, at the time, the accused or the other person was married to someone else; and
- (c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces, or was of a nature to bring discredit upon the armed forces.

(4) There was not a preponderance of the evidence to show that the affair was directly prejudicial to good order and discipline. The MCM defines adulterous conduct that is directly prejudicial to good order and discipline as that having: an obvious and measurably divisive effect on unit or organization discipline, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a service member. There was not a preponderance of the evidence to show that the affair was of a nature to bring discredit to the armed forces. The MCM specifically states that adulterous conduct which is private and discrete in nature is not service discrediting.

(5) As both of your pleas were improvident, the Article 133 and 134 charges should be vacated, your PLOR should have never been issued, and your pay grade should not have been reduced. Even if the Board does not choose to vacate your plea as improvident and your charges as insufficiently supported by evidence, you should not have been reduced.

(6) Your affair was of a limited nature and severity and had no effect on the performance of your military duties. You continued to have glowing evaluations during the time when the affair was ongoing and, though your superiors were not aware of it, the affair would not have had any impact on your service record. You spent nearly five full years as an O-6 prior to beginning the affair with your paramour. Of your nine years of service as an O-6, barely more than a third were concurrent with the affair. The Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) failed to follow the binding guidance set forth for retirement grade determinations. You were under the belief that you would be allowed to retire honorably at your current rank.

In response to the AO, you contend, the Deputy Commandant, Manpower and Reserve Affairs (DC (M&RA)) went against the promise made to you and added additional erroneous charges. Your NJP was a material error necessitating correction because the NJP involved money damages for your reduction in pay grade and violations of your constitutional rights of due process and protection from cruel and unusual punishment. You claim the Commander, RADM B., promised that you would not receive an adverse discharge if you elected NJP and pleaded guilty. You were misinformed about the consequences of electing NJP instead of a court martial. It was never alleged that your conduct brought discredit upon the armed forces. Even if it was not an error, the NJP is an injustice pursuant to 10 U.S.C. section 1552. You also claim that you and your wife were the victims at the hands of your paramour. Charges were not brought until after the affair was over and you were the only one charged. You assert that the AO's finding is arbitrary and capricious and it failed to consider the constitutional violations, your innocence, biased and disproportionate nature of the NJP, and substantial benefits you were promised. In conclusion, you admit to committing a discrete act of adultery; which had zero impact on your unit or your performance.

The Board noted the Command Investigation (CI) into facts and circumstances surrounding allegations of adultery and misconduct. The CI noted that during the month of April 2015, your paramour filed a complaint with the Marine Corps Inspector General (IGMC) alleging that she had a three-year affair with a married active duty Colonel, and he knowingly gave her an incurable disease. The Investigating Officer (IO) substantiated the complaint and determined that your conduct constituted an offense under the Uniform Code of Military Justice (UCMJ). As evidence, your paramour provided emails that were graphic in nature and included nude pictures. The IO noted that you and your paramour began exchanging graphic sexual emails in December 2011 until March 2015. The sexual encounters and intercourse began on or about 7 December 2011 and continued until about October 2014. The IO also noted that you and your paramour had sex on numerous occasions while forward deployed in ██████████; although the general order in effect while deployed required the door be open while visiting a member of the opposite sex. The IO noted, too, that after your assignment to ██████████ during July 2014, your paramour visited you at your office on several occasions. In conclusion, the IO opined that you violated UCMJ Articles 134, 128, 131, 92, and 133.

The Board noted that you received NJP on 30 June 2015 for violating UCMJ Article 133 (conduct unbecoming an officer and gentleman), for sending sexually explicit emails and text messages to your paramour on divers occasions between July 2013 and March 2015 and violating UCMJ Article 134 (adultery) for wrongfully having sexual intercourse with your

paramour, a woman not your wife, at multiple locations, on divers occasions between July 2013 and March 2015; conduct that was to the prejudice of good order and discipline in the armed forces. According to the NJP notification, you were properly notified that your Commander was considering imposing NJP, the alleged offenses, and a summary of the basis that formed the allegations against you. You acknowledged your Article 31(b), UCMJ Rights and consulted with military counsel—the senior defense counsel—Col N. After consulting with defense counsel, you accepted NJP. You also acknowledged that acceptance of NJP did not preclude further administrative action against you; which may include being processed for an administrative discharge and could result in an Other Than Honorable discharge. During NJP, you pleaded guilty to UCMJ Articles 133 and 134, the Commander found you guilty, and awarded you a Reprimand in Writing. Additionally, you acknowledged your right to appeal the Commanding Officers (CO) finding of guilt but elected not to do so.

You received an adverse fitness report ending 29 June 2015 for receiving disciplinary action. The Reporting Senior (RS) Section I comments state that you were the subject of a CI into allegations of conduct unbecoming an officer and adultery and, as a result of the CI findings substantiating some of the allegations, you were relieved of your duties as CO. The RS also noted that you were the subject of NJP, to which you pleaded guilty to Article 133 – Conduct Unbecoming an Officer and Article 134 - Adultery, and you were awarded a PLOR. The Reviewing Officer commented that he relieved you of your duties as CO for a lack of trust and confidence in your abilities to lead. The Board noted that you acknowledged the fitness report, the basis for adversity, and indicated that you had no statement to make.

As the Alternate Show Cause Authority for the Marine Corps, Commanding General, ██████████, reviewed the allegations against you and determined that there was sufficient information to refer your case to a BOI. In lieu of further administrative processing, on 21 December 2015, you requested voluntary retirement and retirement grade determination. In your correspondence to the Secretary of the Navy (SECNAV), you acknowledged that the SECNAV may retire you in a lesser grade than you currently held. You requested to retire in the grade of O-6, accepted full responsibility for your misconduct, again admitted your guilt to the allegations of misconduct, and also admitted that your performance of duty was substandard. You further requested the SECNAV accept your retirement request as a reflection of your remorse and regret for putting the Marine Corps and Naval Service in this difficult position. Additionally, you indicated that your request was submitted after consulting with a qualified defense counsel.

In an endorsement to your NJP and request for retirement in lieu of further administrative separation processing, the DC (M&RA) submitted correspondence to ASN (M&RA) in which he provided a chronology of your case, the events that led to your NJP, and your acknowledgement of responsibility for your misconduct. After a review of the applicable law and regulations, CI, Report of NJP, your retirement request, supporting documents, and chain of command recommendations, he recommended approval of your request for retirement in lieu of further administrative separation processing; but further recommended that you be retired in the lesser grade of lieutenant colonel (LtCol/O-5). As justification, DC (M&RA) determined that while you served in your current grade for over four years before committing misconduct, the nature and duration of misconduct tilts the balance toward retiring you in a lesser grade. The DC

(M&RA) also recommended separation code RNC-1 – Voluntary Retirement Authorized By, But Not Required By Law (Unacceptable Conduct). On 17 October 2016, the ASN (M&RA) approved the recommendation by DC (M&RA).

The Board substantially concurred with the AO's findings regarding your NJP, reduced retirement grade, and narrative reason for separation. Your NJP was appropriate given your admission of a long-term extramarital affair and substandard performance of duty. No officer is entitled to retire in the highest grade that they served. Officers are entitled to retire in the highest permanent grade they served satisfactorily; as outlined in 10 U.S.C. section 1370. Even if the Board accepted your contention that your plea of guilt was improvident, you admitted to having a sexual relationship with a woman not your wife, over several years, and that your performance of duty was substandard. As such, the determination that you failed to serve satisfactorily in the grade of Col was well supported by the evidence. Additionally, your retirement was approved pursuant to your voluntary request made explicitly in lieu of further administrative processing. You voluntarily requested retirement to avoid potential show-cause proceedings; resulting in the appropriate narrative reason for separation. As such, your narrative reason for separation is not only appropriate but it was the only narrative reason that you could reasonably have expected to appear on your DD Form 214, Certificate of Release or Discharge from Active Duty under the circumstances.

Concerning your NJP, service members must voluntarily accept NJP unless they are attached to a vessel. NJP is an administrative tool used to address misconduct and uses the preponderance of evidence standard for the disposition of cases. Members are provided notification and an opportunity to consult counsel, which allows service members to make an informed decision whether to accept punishment at NJP or demand trial by court martial. Service members may present matters in defense, extenuation, and mitigation and present witnesses if their statements will be relevant, and they are reasonably available. Service members are also afforded the opportunity to appeal NJP to a higher authority if they believe it is unfair or inequitable. As an administrative tool documenting an agency official's decision, NJP dispositions are given the presumption of regularity. The burden of proof to be utilized by commanders throughout the NJP process shall be a preponderance of the evidence. This means the CO must determine it is "more likely than not" the member committed the offense defined by the UCMJ.

With regard to the contention regarding plea deals, the Board determined the contention is without merit. Plea agreements are applicable only to court-martial proceedings, not NJP. Contrary to your assertion, *Jonsson* bears no relevance to your case. *Jonsson* involved a guilty plea at a court-martial submitted pursuant to a pretrial agreement. Your case did not involve a plea agreement and the Board found your admissions were sufficient to establish guilt. The Board found no evidence that you signed a plea agreement to avoid court-martial in return for your pleas of guilt at NJP. Your case involved neither a pretrial agreement nor a court-martial—you merely accepted NJP. Therefore, your assertions regarding a plea agreement lack merit. The Board also determined there was no requirement for the NJP authority to establish an independent factual basis to find you guilty of the offenses, i.e. your admissions would have been sufficient. By accepting NJP, you avoided a court-martial and its potential consequences, including a dishonorable discharge, forfeiture of pay, confinement for one year, and revocation of your retirement benefits. The Board found no evidence that your pleas of guilt were

improvident and you failed to overcome the presumption of regularity with regard to the substantiated allegations of misconduct against you. In this regard, before you knowingly and voluntarily accepted NJP, you received advice from the most senior uniformed defense attorney in the Marine Corps. You waived multiple opportunities to dispute the findings when you did not appeal the NJP, did not address the issue in your response to the PLOR or Report of NJP, and you subsequently submitted a request for retirement waiving your right to a BOI.

You were accused of violating Articles 133 and 134, UCMJ through your extramarital affair and sexually explicit communications. The Board found sufficient evidence to support the allegations of misconduct. The Board found that you failed to overcome the presumption of regularity and your actions were deemed unbecoming of an officer and gentleman and prejudicial to good order and discipline. As noted above, you did not refute the allegations. At NJP, the Commander relied upon the preponderance of evidence standard, that included the substantiated CI, supporting evidence and your guilty pleas, when finding you guilty. With regard to the alleged violation of Article 133, UCMJ, the Board determined that there was sufficient evidence to find that your conduct was unbecoming of an officer and gentleman. The nature of Article 133, UCMJ, focuses on conduct that is likely to seriously compromise your standing or character as an officer. The Commander was not in error by finding that sending sexually explicit emails and text messages compromised your standing and character as an officer and as a CO. This is evident by your subsequent relief of duties as CO due your Commander's loss of trust and confidence in your abilities to lead.

With regard to your alleged violation of Article 134, UCMJ, the Board determined that your conduct met the elements for Article 134. The Board found sufficient evidence that you committing adultery with a woman, not your wife. The evidence included your repeated admissions to having a sexual relationship with a paramour, your married status during the years of the relationship, and the fact your conduct was deemed prejudicial to good order and discipline by your chain of command. According to the MCM, "[w]hile extramarital conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances, it may be determined to be conduct prejudicial to good order and discipline." Thus the Board determined the Commander was not in error by finding that your misconduct was prejudicial to good order and discipline. Ultimately, the Board determined that your NJP was conducted pursuant to the MCM (2012 ed.).

The Board determined that all procedural requirements for your retirement grade were met and found no evidence that your constitutional rights of due process were violated. The Board also determined that your punishment and reduction to LtCol were not disproportionate and did not constitute cruel and unusual punishment. The retirement grade reduction process began with the imposition of NJP and submission of the Report of NJP. Following the approval of the CI report, which substantiated allegations of misconduct, the General Court-Martial Convening Authority issued a show cause recommendation. This action was required by the Marine Corps Legal Support Administrative Manual (LSAM). You had an opportunity to submit a statement and provide evidence; ensuring due process. You did not refute any of the findings regarding your extramarital relationship, admitted guilt, and took full responsibility for your actions. You provided evidence of TBI, both the neuropsychological screening and health assessment, which was forwarded to the show cause authority for consideration. However, no further action was

taken on the recommendation for show cause proceedings because you voluntarily curtailed such proceedings with your subsequent voluntary retirement request.

The LSAM provides that if the Commander recommends that an officer be required to show cause at a BOI, the officer shall be allowed an opportunity to submit a resignation or retirement request. It further provides that an officer may tender a resignation/retirement request in lieu of further administrative processing at any time during, or in anticipation of, show cause processing. You availed yourself of this opportunity and your request complied with all of the requirements of SECNAVINST 1920.6C.

The contention that your Commander promised that you would not receive an adverse discharge if you elected NJP and pleaded guilty, as well as your contention that you submitted your retirement request based on the understanding that you would be able to retire in grade, are without merit. You did not receive an adverse discharge, your characterization of service was Honorable, and your narrative reason for separation ("Unacceptable Conduct") was appropriate based on your documented misconduct, admission of misconduct, and pay grade determination. The Board found no evidence that the Commander made a promise to you if you agreed to plead guilty and determined your Commander could not make that promise because he had no authority to do so since SECNAV is the authority for retirement grade determinations. Any input by your chain of command is a "recommendation" to the ultimate decision maker – the Show Cause Authority (for issues of administrative processing) and the SECNAV for retirement grade determination. Regardless, the statement in your request is evidence that you were well aware that you could be retired in the lower grade of lieutenant colonel and the decision regarding your retirement grade and characterization were at the discretion of the SECNAV. Given your 30 years of experience in the Marine Corps, three command tours, and advanced grade, the Board found your claim that you believed you were likely to be retired in grade under the circumstances to be unreasonable. Moreover, contrary to your claim, there is no evidence of a promise made by DC (M&RA) or that you were misinformed about the consequences of electing NJP instead of a court martial. You indicated that, prior to accepting NJP, you consulted with senior military counsel; who presumably would have provided you with the consequences of electing NJP and the consequences of denying NJP and being court-martialed.

In accordance with the applicable guidance, the Board reviewed with liberal consideration your claim that your combat-related TBI contributed to the circumstances resulting in your NJP and retirement grade determination. In this regard, the Board found that your chain of command considered your mental health assessment but found insufficient evidence to link your TBI to the misconduct. They also considered the neuropsychological screening, which noted that impaired executive functioning and impaired impulse control due to a TBI, could be a contributing factor to your decision to engage in inappropriate behaviors resulting in adultery. The Board, however, determined there is insufficient evidence to establish a nexus between your TBI and misconduct. Your conduct was premeditated: it stretched for years, across multiple duty stations, and involved extensive communications with your paramour and attempts to conceal the full extent of your relationship. Premeditated misconduct is not generally excused by a mental health condition. In addition, as you correctly pointed out, other than the concealed misconduct, your record indicates you were performing your duties extremely well during this period. Thus, even

after applying liberal consideration, the Board also determined there is insufficient evidence that a nexus exists between your misconduct and any mental health condition.

As mentioned above, you were entitled to retire only in the highest grade that you served satisfactorily. While you had a distinguished career with meritorious service in lower grades, your misconduct in the grade of Colonel necessitated a reduction. Based on the record, the DC (M&RA) and ASN (M&RA) considered all of the information that you presented to this Board when determining that your misconduct was serious enough to constitute a significant departure from the conduct required of officers of the Naval Service. In this regard, the CI substantiated misconduct that included perjury to a civilian court, false official statements to an IO, failure to inform your paramour that you carried the HSV2 virus, an inappropriate adulterous relationship which spanned the course of three different duty stations, including a deployment to [REDACTED], over a period of at least three years, and the taking and sending of hundreds of inappropriate and sexually explicit messages, including pictures of your genitals in your office while in uniform. Further, your retirement request explicitly stated, "I understand that the Secretary of the Navy may retire me in a lesser grade than I currently hold, and that the retirement grade will be the highest grade in which I served satisfactorily, as determined by the Secretary of the Navy." You also indicated that prior to signing the request, you consulted the judge advocate who was then serving as the Chief Defense Counsel of the Marine Corps. You were advised by senior defense counsel and made an informed decision to waive your right to a BOI.

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,

3/31/2025

the 1990s, the number of people in the United States who are 65 years of age or older has increased by 50 percent. The number of people 75 years of age or older has increased by 100 percent. The number of people 85 years of age or older has increased by 200 percent. The number of people 95 years of age or older has increased by 400 percent.