



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

██████████  
Docket No. 6380-24  
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 10 September 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. In addition, the Board considered the 22 July 2024 advisory opinion (AO) furnished by Headquarters, Marine Corps, Military Personnel Law Branch (JPL), as well as your response to the AO.

The Board carefully considered your request to remove the following from your Official Military Personnel File (OMPF): the 29 October 2021 Unit Punishment Book (UPB) entry and the associated Administrative Remarks (Page 11) 6105 and Promotion Restriction counseling entries.

The Board considered your contentions that the adverse material should be removed because your command violated the timelines associated with the Prohibited Activities and Conduct (PAC) Order and your right to appeal any substantiated PAC order findings was violated. In addition, the Board considered your claim that the command failed to provide you with reasonable notice associated with the adjudication of Non-judicial Punishment (NJP) pursuant to Article 15, of the Uniform Code of Military Justice (UCMJ). Next, you claim that your commanding officer (CO) appears to have considered previous allegations from your former command when he determined your guilt at NJP proceedings. Finally, you claim that your CO refused to consider additional evidence you attempted to provide to him that the investigation failed to include.

The Board noted the CO notified you he was considering imposing NJP for violations of the Uniform Code of Military Justice based on evidence collected from official statements and a Command Investigation. On 29 October 2021, you received NJP for three incidents of violating general order or regulation and received suspended punishment that included forfeitures of pay and restriction. Prior to the NJP hearing, you were afforded the opportunity to review the command investigation. In addition, you were provided the opportunity to submit two written statements, multiple fitness reports, and have two Marines testify over the phone as witnesses.

Based on your contentions, the Board considered the AO which recommended denial of your request. In response to the AO, you further claim that you were only afforded the opportunity to review the investigation if you first agreed to accept NJP. You further contend that, pursuant with the Manual for Courts-Martial (MCM), appeals are limited to punishments that are considered disproportionate or unjust; therefore, you did not have grounds to submit an appeal for NJP as it would have been limited solely to the punishment itself.

The Board, however, substantially concurred with the AO. In this regard, the Board noted a command investigation was conducted regarding allegations that you made unwelcome sexual advances and repeated offensive comments and gestures of a sexual nature towards two Marine sergeants. As a result, the Board you received NJP for violating Article 92, Failure to obey an order or regulation of the Uniform Code of Military Justice (UCMJ), and for violating U.S. Navy Regulations, 1990, Article 1165, Unduly Familiar Relationships and Article 1166, Sexual Harassment. The Board also noted, while represented by counsel, you accepted NJP and did not appeal the NJP despite your contentions of error. The Board determined you were afforded reasonable time to review the investigation, and your remedy was to refuse NJP or file an appeal if you were dissatisfied with the results. The Board was not persuaded by your arguments that your right to appeal the NJP was limited to the punishment imposed and observed that the Manual for Courts-Martial (2019 ed.) specifically allows an appeal to a service member who considers the punishment<sup>1</sup> to be unjust. Further, in regard to your contention that your CO considered a prior investigation, the Board noted that your CO imposed punishment for some, but not all, of the allegations which is indicative that that he applied the required preponderance of the evidence standard when making his decision and that he was not swayed by the previous investigation. Similarly, the Board further determined, based on the UPB, that you provided insufficient evidence of your claims that the CO did not consider your evidence at the NJP. Finally, regarding your claim that you were only given the opportunity to review the investigation if you first accepted NJP, the Board determined the CO was well within his discretionary authority and his refusal to allow you to review the investigation before accepting NJP is consistent with law and regulation. The Board agreed with the AO that, although service members are often permitted to review relevant evidence before deciding to accept NJP, the practice is not mandated.

Thus, the Board concluded that your NJP was conducted according to the Manual for Courts-Martial (2019 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined that when making the decision to impose NJP, the CO relied on a

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<sup>1</sup> The manual specifically allows service members to appeal a NJP punishment that is either disproportionate and/or unjust. The Board concluded that a NJP punishment is unjust if the finding of guilt is erroneous.

preponderance of evidence that substantiated the allegations of misconduct. Finally, the Board concluded that your dissatisfaction with the outcome is not a basis for relief and there was sufficient evidence that the NJP was conducted in accordance with relevant procedures for awarding NJP.

The Board did not consider removal of your adverse fitness report. First, the Board noted that you did not provide the contested report, and it could not be located in your OMPF. Second, the Board determined you must first exhaust your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals; therefore, if you still wish to have the contested fitness report removed, you must submit your request to the PERB according to the Marine Corps Performance Evaluation System Manual.

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 determined the evidence you provided was insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error or injustice warranting removal of your NJP or the associated counseling entries. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

9/30/2024

