

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 6518-24 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 applications, 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 your 12 May 2023 Administrative Remarks (Page 11) 6105 counseling entry. The Board considered your contention that the Administrative Separation Board (ASB) determined there was no basis for the Article 120, Uniform Code of Military Justice (UCMJ) charge contained on the entry and that the correction should be made because it is hindering your career.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry for violation of Articles 92, failure to obey an order or regulation and Article 120, UCMJ, abusive sexual contact. The Board also noted that you acknowledged the entry and in your rebuttal statement, you assert that the entry was received for actions you did not commit, the charges were dismissed and withdrawn, and there is no evidence that you committed any such actions. However, the Board determined that 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. Further, your commanding officer signed the entry, and determined that your violation of the UCMJ was a matter essential

to record, as it was his right. The Board thus determined, the commanding officer relied upon sufficient evidence and acted within his discretionary authority when deciding that your entry was warranted.

In regard to your contention that the ASB determined there was no basis for the Article 120, UCMJ, the Board noted that an ASB functions as an administrative rather than a judicial body. Accordingly, in the ASB's proceedings, the rules of evidence governing trials by court-martial are not applicable. Further, the Board noted the purpose of an ASB is to determine your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance and does not prove one's guilt or innocence. Therefore, the Board determined that the ASB's findings do not invalidate the contested entry. The Board thus determined that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board concluded 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.

