



**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. 6677-24  
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 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 1 September 2023 Administrative Remarks (Page 11) 6105 counseling entry. The Board considered your contentions that you received the counseling entry while you were pregnant, legally separated, and pending divorce. You claim there was a Military Protection Order (MPO) in place, as well as an ongoing Family Advocacy Program (FAP) case for domestic violence. You also claim that you did nothing wrong because you were separated, you were both moving onto different people, and you were supposed to be protected under the Safe-to-Report Act implemented in June of 2022. Further, the presence of the counseling entry in your record will affect your reenlistment.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105-entry counseling you for lack of judgement for violating Article 134, UCMJ. On or about December 2022, you wrongfully engage in extramarital conduct while still legally married. The Board also noted that you acknowledged the entry and elected not to make a statement. 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 commanding officer (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 on 6 September 2022, and the █ dissolved your marriage on 18 February 2024. The Board found no evidence other than your statement that you were legally separated during December 2022. The Board further determined that your CO acted within his discretionary authority when determining that your counseling entry was warranted.

Concerning the Safe-to-Report Policy, the policy prescribes the handling of alleged minor collateral misconduct involving a service member who is the victim of an alleged sexual assault. The Board found no evidence you were the victim of sexual assault and determined the Safe-to-Report Policy does not apply in your case. Should you have evidence to the contrary, the Board recommends you submit your evidence in an application for reconsideration.

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,

7/30/2024

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