



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. 7760-24
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 13 August 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 6 September 2023 Administrative Remarks (page 11) 6105 and Promotion Restriction counseling entry, and associated rebuttal statement. The Board considered your contention that you were falsely accused and under investigation by the U.S. Naval Criminal Investigative Service (NCIS) but your chain of command dismissed it back in October 2023. You further assert the contested counseling entries were removed "off of everything else" but was left in the contracts tab of your official record. Finally, you contend that you are no longer on administrative hold or being processed for administrative separation.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), on 6 September 2023, you were issued a counseling entry for violation of Article 120, resulting from the U.S. NCIS report of investigation completed on 14 April 2023. The Board determined the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling 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 (CO) signed the counseling

entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do. The Board thus determined the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

In regard to your contention that your chain of command decided to no longer process you for administrative separation and the counseling entry was erroneously left under the contracts tab of your official record, the Board noted processing for administrative separation is mandatory following the first substantiated incident or substantiated attempt to commit sexual misconduct. Next, the Board noted that an administrative separation board functions as an administrative rather than a judicial body whose purpose is the administrative elimination of unsuitable, unfit, or unqualified Marine from continued service and does not determine guilt or innocence. Thus, the Board determined you provided insufficient evidence to support your claim that you were falsely accused or that all charges were dropped. Moreover, the Board concluded the CO's decision to no longer process you for administrative separation, does not invalidate the counseling entry and you provided insufficient evidence for the Board to determine the acts did not occur.

Finally, 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 found your evidence insufficient to overcome this presumption. Therefore, the Board 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,

8/28/2024

