



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

█
Docket No. 9644-24
Ref: Signature Date

█
█
█

Dear █

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 29 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, and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your 15 December 2022 non-judicial punishment (NJP). The Board considered that you were found guilty at NJP for violating Uniform Code of Military Justice (UCMJ) Articles 81 (conspiracy), 92 (failure to obey order or regulation), 105 (forgery), 107 (false official statement), and 124 (fraud). You contend that you received per diem and basic allowance for housing (BAH) while on mobilization orders (270 days). You were told to find your own housing and could stay with your fiancé. Additionally, you were advised to submit a lease, all receipts, and to pay with your government travel charge card. During an audit, it was discovered that per diem should not have been issued. You claim that you followed directions; however, after completion of the mobilization period, you were informed that you committed fraud because the Joint Travel Regulation (JTR) states that a Sailor is not allowed to stay with a family member or friend when receiving per diem. You also claim any orders over 180 days are considered Permanent Change of Station and per diem "shall" not

be issued, and BAH is allowed with no restriction on who a Sailor can stay with. You also contend that you were not trained on the JTR, were given eight hours notice of the NJP, and were not allowed witnesses or to speak in your defense. You further contend that the civilian justice officer intervened and had your appeal denied. As evidence, you provided emails from a lieutenant commander (LCDR/O-4) inferring that you should have been entitled to BAH.

The Board noted your “Application for Security Clearance” submitted by counsel to the Department of Defense Consolidated Adjudications Facility (DONCAF). Your application was in response to the DONCAF notice regarding your personal conduct referenced in a Naval Criminal Investigative Service Report of Investigation (ROI), dated 13 December 2021. According to your application, the ROI noted that you were recalled to active duty on 20 October 2020 to help with DoD COVID-19 response. You signed a lease agreement, dated 27 November 2020, between you and your fiancé for \$2,288 a month in rent. Between 25 November 2020 and 30 April 2021, you paid rent to your fiancé totaling \$11,520. The ROI also noted that during an interview with investigators, you admitted to residing with your fiancé and generating a lease agreement. In the lease agreement, you listed a fake property management company and used the home of address of your fiancé’s relatives as the business address. Additionally, the ROI noted that your NJP appeal was reviewed by the appropriate authority and denied. After a careful review of your request and the facts of the case, the appropriate authority determined that your NJP was conducted properly, was supported by sufficient evidence, and the punishment awarded was found to be within the authority of the Commanding Officer (CO).

The Board noted that you received an adverse evaluation report for the reporting period 16 November 2022 to 15 December 2022. Your performance trait for Military Bearing/Character was marked 1.0, and your promotion recommendation was marked “Significant Problems.” As justification, the Reporting Senior commented, “[r]eport submitted on the occasion of [your] Non-Judicial Punishment . . .” “Date of conviction: 22Dec15” and “Concluding Date of proceeding: 23Feb13 (Appeal Denied).” You signed the evaluation report and indicated that you did not intend to submit a statement.

The Board determined that your NJP is valid. In this regard, the Board noted that you received NJP for several violations of the UCMJ for creating a fake lease agreement to receive per diem that you were not entitled to. The Board also noted that you admitted to generating the fraudulent lease agreement, residing with your fiancé, and creating a fake property management company. The Board found no evidence of your mobilization orders, or your entitlements while on mobilization orders, and you provided none. Regardless, the Board determined that any purported discrepancies with your entitlements according to the JTR was not the basis for your NJP. The aforementioned UCMJ violations were supported by evidence that included your admission to the charges. The Board also determined that your lack of knowledge or training on the JTR is not a defense as ignorance of the law or regulations is not a legal defense or excuse for committing misconduct. Furthermore, the Board found no evidence that you were denied due process. Nor is there evidence that someone intervened and had your appeal denied. The Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

11/14/2024

