



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. 9708-24
Ref: Signature Date

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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.

You previously applied to this Board to remove the 11 May 2022 (Page 11) 6105 counseling entry and rebuttal statement. Your request was denied on 21 March 2023.

The Board carefully reconsidered your request to remove the 11 May 2022 Administrative Remarks (Page 11) 6105 counseling entry and rebuttal statement. The Board considered your contention that the counseling entry was issued based on the information the Commanding Officer (CO) had at the time and not all of the relevant facts were presented when the counseling entry was issued. Since then, a unanimous decision was reached during an Administrative Separation Board (ASB), which concluded that the evidence does not support any of the alleged acts occurred. You claim that based on a preponderance of the evidence a Superior Court Judge found that it is likely that the alleged actions did not take place. You also claim that the Commander who issued the counseling entry has written a letter explaining that if all the evidence had been made available, his decision to issue the counseling entry may have been different.

The Board noted the Naval Criminal Investigative Service (NCIS) Report of Investigation (ROI) regarding the 20 December 2021 report of multiple domestic violence incidents by you, against your

spouse. Your spouse alleged that you strangled her with two hands on three separate occasions, causing her to be unable to breathe. She reported that the incidents occurred in June 2016, September 2017, and January 2018. The ROI noted that NCIS attempted to interview you; however, you elected to invoke your right to counsel. A no-contact order was issued and NCIS collected evidence that included photographs of your spouse for suspected violations of Uniform Code of Military Justice (UCMJ) Articles 128 and 128b.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a Page 11 entry counseling you for strangling your wife. The Board also noted that you acknowledged the counseling entry and submitted a statement denying the allegations. The Board, however, affirmed the previous Board's decision that your counseling entry is valid as written and filed in accordance with the MARCORSEPMAN.

Concerning the correspondence furnished by your former CO, the Board found his correspondence unpersuasive. In this regard, his correspondence states that you asked him to submit the letter and, although he acknowledged the purported evidence presented at the ASB and civilian proceedings, he only indicated that his decision to issue the counseling "*may*" [emphasis added] have been impacted. The Board found no evidence of the purported civil court decision or the evidence presented to the ASB and you provided none. The Board determined that the correspondence provided by your former CO is not tantamount to an endorsement for the removal of your counseling entry, nor is it sufficient to conclude that the counseling entry was not warranted.

Concerning the decision by the ASB, the Board concurred with the previous Board's determination that your retention by the ASB is not sufficient to warrant removal of your counseling entry. The Board further determined that ASBs are not intended as, nor does it function as a method to overturn or invalidate other Marine Corps procedures or administrative actions. Although the ASB did not find sufficient evidence to warrant separation, that finding does not affect the validity of your counseling entry, and the ASB's finding is not binding on your CO's authority to issue the counseling entry. 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

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