

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 9714-24 Ref: Signature Date

Dear ,

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 5 November 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 determined that your personal appearance, with or without counsel, would 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 considered your request for removal of your 4 April 2022 Report of Misconduct (ROM) along with all related adverse material from your official record. The Board considered your claims that the ROM contains inaccuracies, and the Preliminary Inquiry upon which it was based is flawed. Additionally, you claim that you were denied due process and a fair opportunity to defend yourself, including being unable to view or obtain the materials used to substantiate the alleged misconduct. You further contend that your command ignored or refused to consider your statement, which you claim suggests the facts and due diligence were overlooked in favor of a predetermined outcome. The Board also considered your assertion that the allegations of fraternization, which occurred over five years ago, are barred by the two-year statute of limitations (SOL), and that the ROM misrepresents the facts of the case. Finally, you maintain that you were never in a leadership position during or after the alleged relationship and that the relationship occurred after your unit's change of operational command to

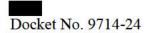
in preparation for your deployment with the

The Board, upon consideration of your claims and review of the available evidence and facts, determined you provided insufficient evidence to support your claims of error and injustice. In this regard, the Board considered your claim that you were denied a fair opportunity to defend yourself against the allegations, however the Board noted on 29 June 2022, the Staff Judge Advocate confirmed you were given an unredacted copy of the investigation and afforded sufficient time to submit your responses. The Board further noted you did not request an extension or more time when submitting your initial response. Additionally, your second response, submitted two months after the ROM, was considered by the commanding general (CG), and both responses are part of your official record. Based upon these findings, the Board concluded that you were not disadvantaged in any way and were afforded multiple opportunities to present your defense.

Additionally, The Board considered your claims that the allegations of fraternization were over five years old, and that the SOL had expired. However, the Board determined this claim to be without merit, noting that the SOL refers to the time limit for prosecuting serious offenses under court-martial and since you were not subject to court-martial, the SOL does not apply to the issuance of a ROM. The Board found that the CG acted within his discretionary authority in addressing the allegations and that the ROM was issued properly, regardless of the time elapsed. The Board also considered your assertion that your command ignored or refused to consider your statement but found no evidence of such neglect. The Board determined that your statement was properly reviewed, and there is no indication the facts or due diligence were disregarded in favor of a predetermined outcome.

While you contend that both the ROM and the Preliminary Inquiry were flawed, the Board determined other than your personal statement, you provided insufficient evidence to substantiate these claims. The Board substantially concurred with the CG's determination that you committed the misconduct documented in the ROM. The Board noted that, pursuant with MCO 5800.16, Legal Support and Administration Manual, if the General Court Martial Convening Authority determines an officer did commit the misconduct alleged, he must notify the Commandant of the Marine Corps (CMC) of his or her conclusion and forward a ROM to the CMC. The Board determined the available evidence supports the CG, relying on a preponderance of evidence, and acting within his discretionary authority and issued the ROM in accordance with relevant policies. Moreover, 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 determined the evidence you provided was insufficient to overcome this presumption. 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,	
	11/21/2024
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Deputy Director	
Signed by:	