



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

█
Docket No. 10403-24
Ref: Signature Date

█
█
█

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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. 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.

The Board carefully considered your request to remove the 10 December 2020 Administrative Remarks (Page 11) 6105 counseling entry and rebuttal statement. You also request to remove the duplicate Page 11 entry. The Board considered your contention regarding unlawful command influence in the form of pressuring decision-makers. Specifically, you allege that upon completion of a command investigation (CI), you received the contested counseling entry. You were refused guidance into the decision making process, and the Sergeant Major told you this is the way forward. You claim that you found the CI in a drawer with different information. The CI recommended a non-punitive letter of reprimand (NPLOR), the endorsement stated the CI was "not substantiated," and indicated that you "will be counseled in the form of a Non Punitive Letter of Caution." You also contend the endorsement was dated later than the one filed, and demonstrates that higher leaders changed the mind of the Battalion Commander and backdated endorsements to align with their timelines.

The Board noted the CI you provided into allegations of misconduct. The CI found that your spouse accused you of inappropriately texting another woman at work. The CI indicated that you both argued and, when you attempted to leave, she fell over a weight bench when you both tried to grab the spare

keys from an upper shelf in the garage. This caused injuries to her hand, leg, and arm. That evening, your spouse told a police officer that you assaulted her by forcefully grabbing her, choking her, pushing her down, and attempting to hit and kick her. The following day, your spouse signed a stop investigation report stating she does not want to press charges. The CI noted that photos were taken that include images of your spouse's red and swollen pinky finger, red mark on the left and right side of her neck, swollen and bruised back of her right knee, and red marks on the right side of her forehead, right elbow, and bicep. The Investigating Officer (IO) recommended that you remain on the Force Preservation Program and that a NPLOC be issued.

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 your use of physical force and/or restraint against your wife in a disproportionate and inappropriate manner: resulting in the Sherriff's Department being called to your off-base residence. The entry noted that a separate CI was conducted; however, evidentiary issues, specifically your wife recanting her statement, resulting in the Sherriff's department closing its investigation without filing charges. Despite these issues, and based on the totality of the circumstances, your Commanding Officer (CO) concluded by a preponderance of the evidence that the domestic incident referenced above was inappropriate. The Board also noted that you acknowledged the entry and, in your statement, indicated that regardless of the outcome, you took full responsibility for putting yourself in a situation to have your character questioned. The Board determined that the contested entry is valid as written and filed 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 CO signed the entry and determined that your misconduct was a matter essential to record, as it was within his/her discretionary authority to do.

Concerning your contention of unlawful command influence, the Board found your evidence insufficient to support your contention. In this regard, the Board determined that any recommendation provided by an IO, by definition, is not binding on the Commander's authority and your CO was not limited to issuing a NPLOC. The Board noted that your CO considered the totality of the circumstances and relied upon a preponderance of the evidence when concluding that your counseling entry was warranted. The Board also determined that your CO acted properly and within his/her discretionary authority when issuing your counseling entry. Moreover, 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.

Concerning the duplicate material in your OMPF, the Board determined you have not exhausted your administrative remedies with the Marine Corps. Requests for the removal of duplicate materials are administrative in nature and must be sent to Headquarters Marine Corps (MMRP) or to the MMRP organizational mailbox: smb.manpower.MMRP@usmc.mil.

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

█

Executive Director

Signed by: █