

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 10454-24 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 applications 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 applications, 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 carefully considered your request to remove your 25 May 2023 Administrative Remarks (Page 11) 6105 counseling entry and associated rebuttal. The Board considered your contentions that the counseling was based specifically and solely upon the Incident Determination Committee (IDC) which is in violation of Marine Corps Order (MCO) 1754.11A. The Board also considered your claims that your command did not conduct an investigation and that upon completion of a civilian investigation the allegations were dismissed.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued the counseling entry for violation of Article 134, of the Uniform Code of Military Justice and the IDC's finding that you "met criteria" for entry into the Advocacy Program. The Board also noted you signed the counseling entry and were afforded the opportunity to submit a statement. Specifically, the Board noted that the entry provided written notification concerning your deficiencies, specific recommendations for

corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. While the Board considered the District Attorney for the 22nd Judicial District's decision to refuse charges, the Board noted their decision was not a determination of your guilt or innocence but a prosecutorial decision not to pursue criminal proceedings. Furthermore, the Board noted the counseling was not issued "solely" based upon the IDC and that your Command issued the counseling based upon your arrest for Domestic Abuse Battery which was then verified by the IDC to meet criteria for abuse or maltreatment [of your spouse]. As a result, the Board determined insufficient evidence of error or injustice exists with the counseling entry in question to warrant its removal from your record. The Board determined the commanding officer (CO) was well within his discretionary authority to issue the counseling entry and that the entry met the 6105 counseling requirements detailed in the MARCORSEPMAN. The Board concluded that your CO was best situated to determine the accuracy of your misconduct. 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 found your evidence insufficient to overcome this presumption. 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.

