



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

█  
Docket No. 10864-24  
Ref: Signature Date

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Dear Petitioner:

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.

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 12 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 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 27 June 2018 unit punishment book (UPB), which documents your non-judicial punishment (NJP), and all associated adverse entries including the 27 June 2018 Administrative Remarks (Page 11) 6105 and Promotion Restriction counseling entries. The Board considered your claims that you were not aware of Article 1168 of the United States Navy Regulations, prior to the alleged violation. You further contend that you did not sign the counseling entry until 22 February 2019, almost a year after NJP. Finally, the Board also considered your contention that court testimony from your ex-wife later confirmed the video in question was consensual, disproving the original allegation.

The Board noted, on 18 April 2017, the U.S. Navy published All Navy (ALNAV) 021/17, which introduced Article 1168 of the U.S. Navy Regulations, providing guidance concerning the nonconsensual distribution or broadcasting of images. Shortly thereafter, on 9 May 2017,

Marine Administrative Message (MARADMIN) 233/17 was published to modify the Marine Corps Separation and Retirement Manual to include violations of Article 1168 for mandatory processing for separation. On 27 June 2018, the Commanding Officer (CO) imposed NJP for violation of Article 92 (Failure to Obey a Lawful Order) of the Uniform Code of Military Justice (UCMJ) by wrongfully broadcasting a visual image, which was based on these regulations. Punishment imposed at NJP consisted of 45 days restriction and extra punitive duties, and forfeiture of pay, which was suspended for six months unless sooner vacated. The Board noted, too, as a result of NJP, pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 counseling entry and a promotion restriction counseling entry pursuant with MCO P1400.32D (ENLPROMMAN). On 22 February 2019, the Board further noted that you also received a counseling entry pursuant with the Marine Corps Individual Records Administration Manual (IRAM) concerning the Commandant of the Marine Corps (CMC) guidance regarding ALMAR 008/17 which provides guidance concerning Social Media and unofficial internet posts.

The Board considered your claims that you were unaware of Article 1168, U.S. Navy Regulations prior to the alleged violation; however, the Board found the regulation was published well before the incident occurred and determined a lack of awareness does not excuse or justify the actions which resulted in your NJP. Furthermore, the Board determined although you claim that court testimony from your ex-wife later confirmed the video was consensual, the Board concluded that other than your personal statement, you did not provide evidence substantiating your claim. Furthermore, the Board determined that your NJP was conducted according to the Manual for Courts-Martial (2016 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined when making the decision to impose NJP, the CO would have relied on a preponderance of evidence that substantiated the allegations of misconduct. 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.

Next, the Board considered your claim that the 22 February 2019 counseling entry was issued almost a year after your NJP. However, the Board noted this particular counseling was issued as part of CMC White Letter 2-17 directing all Marines receive a formal counseling entry in their official record confirming that they have read and understood ALMAR 008/17. The Board determined this counseling entry was not connected to the incident which led to your NJP and further determined the counseling entry was properly issued in accordance with the IRAM.

As a result, 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.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

12/2/2024



Executive Director

Signed by: 