



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. 11222-24
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your application on 28 January 2025. 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 expunge your name and information from law enforcement or criminal investigative reports including the Defense Central Index of Investigations (DCII) or any other system of record subject to the Fiscal Year 2021 National Defense Authorization Act. The Board considered that Naval Criminal Investigative Service (NCIS) investigated you for an allegation of domestic violence and the Criminal Justice Information Service (CJIS) record indicates charges for domestic violence and simple assault. You claim the investigation and subsequent discovery phase of the court-martial revealed that there was no probable cause to believe a crime had been committed and all charges were withdrawn and dismissed. You contend there was and is no probable cause to believe the offense of domestic violence has been committed. Due to the lack of evidence and your Honorable discharge characterization, it is unjust to have the domestic violence allegation in your background check. You also contend NCIS did not fully consider the application; they looked only at the NCIS case file and preliminary hearing officer's initial recommendation. Additionally, NCIS did not consider the evidence presented in your application that shows the lack of probable cause, the continual lies on the part of the alleged victim, and the government's recognition that there was no longer probable cause to pursue court-martial; resulting in the withdrawal of charges. You also claim the CJIS entry does not fairly represent the state of the

case and its presence in your record is disproportionately detrimental to your career and life. You further contend that:

(1) Indexing must be based on the law enforcement officer's initial determination of probable cause. The only offense you were investigated for was assault. You should not be indexed for domestic violence because there was no probable cause to believe your ex-girlfriend was an intimate partner.

(2) If indexing is improperly based on the court-martial charges, the listed offenses are inaccurate and require correction. There was no probable cause for larceny, only wrongful appropriation, which is an excluded offense; therefore, "larceny" must be removed from the record. There was no probable cause to believe you committed "kidnapping" or "stalking." There was no probable cause to believe you threatened the victim or another service member.

The Board noted the NCIS Report of Investigation (ROI) in which the victim reported that you broke into her room and assaulted her in February 2022. She also alleged that you assaulted and threatened her and another service member on 15 May 2022. The Board also noted that your chain of command referred your case for prosecution at general court-martial and, before going to trial, the convening authority withdrew and dismissed all charges and specification without prejudice.

The Board noted that your counsel submitted a request to review and expunge the titling in NCIS records. In response, the NCIS Office of Counsel denied your request in part. The NCIS Office of Counsel approved the expungement for violations of the Uniform Code of Military Justice (UCMJ): Article 115 (Communicating a Threat); Article 121 (Larceny of Non-Military Property); Article 125 (Kidnapping); Article 129 (Burglary) and Article 130 (Stalking) from your criminal history record information. NCIS determined the aforementioned charges did not reflect the scope and purpose of their NCIS investigation; however, they retained the violations of Article 128 (Battery) and Article 128b (Domestic Violence) based on their review of the investigation records.

Based on the totality of the evidence, the Board substantially concurred with NCIS' determination that your name was properly titled and indexed in accordance with Department of Defense Instruction (DoDI) 5505.07 for violating UCMJ Articles 128 and 128b. In this regard, the Board noted the NCIS finding that probable cause did and still exist to believe that you physically assaulted the victim. NCIS based their finding on forensic, medical, and witness statements obtained by NCIS during its investigation. The NCIS Office of Counsel reviewed the NCIS investigative case file and considered other dispositive factor that include: (1) the extent or lack of corroborating evidence against your client with respect to the offense at issue, (2) the extent or lack of administrative, disciplinary, or judicial action taken, and (3) the type, nature, and outcome of any such action. The NCIS Office of Counsel also considered that the preliminary hearing officer recommended that judicial action be taken against you and that all charges and specifications for which he found probable cause be referred to a general court-martial.

The Board noted that titling and indexing are administrative procedures and do not imply any degree of guilt or innocence. Unlike a court-martial beyond a reasonable doubt standard of proof, the Board determined that the adjudication of this matter has the low threshold of probable

cause. The Board also noted that your law enforcement record was corrected and indicates charges for Article 128 and 128b and the general court martial charges were withdrawn and dismissed without prejudice. Therefore, the Board determined that the law enforcement record accurately reflects the disposition of your case.

Notwithstanding the convening authority's decision to withdraw and dismiss your charges, the Board determined that the exercise of prosecutorial authority is discretionary. In evaluating the potential merit of a prosecution, the convening authority must consider the ability to overcome the standard of proof required at trial (beyond a reasonable doubt). Beyond the decision to withdraw and dismiss the charges, the Board found no evidence of the convening authority's reasoning for the decision. The Board determined there is no evidence to support your claim that the discovery phase of the court-martial revealed there was no probable cause.

The Board found the evidence in your petition insufficient to outweigh the evidence of your misconduct, credibility of the NCIS ROI, or probable cause standard. The withdrawal of your charges prior to court-martial is not dispositive of the evidence that the assaults occurred. Moreover, according to DoDI 5505.07, "[o]nce the subject of a criminal investigation is indexed in DCII, the information will remain in DCII, even if they are found not guilty, unless the DoD LEA head or designated expungement official grants expungement." DoDI 5505.07 also directs DoD Law Enforcement Agencies (LEAs) to "title subjects of criminal investigations in DoD LEA reports and index them in DCII as soon as there is *credible information* [emphasis added] that they committed a criminal offense." The Board determined that NCIS relied upon credible information when your name was indexed and the NCIS Office of Counsel provided sufficient justification to support their finding that there is probable cause for assault and domestic violence.

Moreover, the Board is not an investigative body and 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 additional 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,

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