



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: 125-21
Ref: Signature Date

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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 application on 28 September 2021. 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, as well as the 1 April 2021 advisory opinion (AO) furnished by the Headquarters, Marine Corps Military Personnel Law Branch (JPL) and your response.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 change your date of rank (DOR) from 1 July 2020 to 1 August 2018. You also request to remove your 20 June 2018, Administrative Remarks (page 11) entry, rebuttal statement, your 27 July 2018 and 7 July 2020 page 11 entries and associated rebuttal statement. The Board considered your contentions that your original promotion date would have been 1 August 2018 if not for the initiation of adverse action based on an allegation of misconduct; your administrative separation board concluded that you did not commit misconduct; your page 11 entries failed to comply with provisions of the Marine Corps Individual Records Administration Manual (IRAM) rendering the entries void; your arrest was not a deficiency; you were exonerated of the allegations; and your 20 June 2018 entry is not of

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permanent value. You also contend that your 7 July 2020 entry is not required and is unnecessary; a page 11 entry is not the appropriate format for submitting acknowledgment of promotion reinstatement; the Marine Corps Enlisted Promotion Manual (MARCORPROMAN) provides that the only instance when a Marine is issued the original date of rank and effective date is in the case of a delay where the Marine is subsequently exonerated of all wrongdoing; the decision to change your effective date of rank is a product of reprisal in retaliation for going against the grain and requesting mast; the adverse action occurred after you requested mast. You claim that your command's failure to endorse your original promotion date is adverse and ignores the regulatory framework provided for handling such scenarios.

The Board, however, substantially concurred with the AO that your DOR is not in error and your page 11 entries are valid. On 29 April 2018, you were arrested by the [REDACTED] for an alleged violation of [REDACTED] Penal Code 273.5a 'Corporal Injury to Spouse' after police found your spouse crying and bleeding in the hotel room where you stayed that night. On 8 May 2018, you were issued a Military Protective Order. On 20 June 2018, pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry counseling you for being arrested by the [REDACTED]. The Board noted that you were properly counseled, and determined that the contested entry was written and issued according to the IRAM, and that the entry provided written notification concerning your deficiency, 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 commanding officer (CO) signed the entry and determined that your performance was a matter essential to record, as it was his/her right to do.

Concerning your request to change your DOR to 1 August 2018, the Board noted that you were notified of your selection to E-7 on 7 June 2018. On 27 June 2018, the command Incident Determination Committee (IDC) met and determined that your case met the criteria for adult physical maltreatment against your spouse and an entry was made into the Department of Defense Central Registry database. On 27 July 2018, you were informed that your promotion was being delayed and you were afforded the opportunity to submit a statement. On 30 July 2018, your CO recommended that your promotion be delayed for an additional six months to observe your conduct and performance and to allow for the adjudication of your criminal case. On 18 December 2019, your administrative separation board unanimously found that the preponderance of evidence did not support the allegations and recommended your retention in the Marine Corps. On 7 July 2020, you were notified of your CO's decision to recommend that the Commandant of the Marine Corps (CMC) grant your promotion with an adjusted DOR effective 1 July 2020. Your CO cited your completion of the Military Diversion Program on 5 June 2020 as a basis to grant and to adjust your DOR to 1 July 2020. On 30 July 2020, the Commanding General (CG), I Marine Expeditionary Force (MEF), concurred and recommended your promotion to E-7 with an adjusted DOR effective 1 July 2020. The CG, I MEF noted that your completion of the diversion program does not address your guilt or innocence and the adjusted DOR reflects the time you spent to gain the maturity and discipline to assume the duties of an E-7. On 20 August 2020, the CMC directed your promotion to E-7 effective 1 July 2020. The Board also noted that according to the MARCORPROMAN, after a period of delay, the CMC may direct delivery of an appointment with a new date of rank after the commander certifies the Marine is qualified for promotion. The Board determined that based upon your

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arrest, pending criminal charges, and IDC determination the delay of your promotion and subsequent adjustment of your DOR was properly processed according to regulations. The Board also determined that the CMC acted within his discretionary authority by permitting your promotion and adjusting your DOR. Moreover, the CMC was not bound by the findings of your administrative separation board.

On 2 July 2018, you were charged with corporal injury to your spouse and domestic abuse. On 3 July 2018, a civilian protective order was issued by the City of [REDACTED]. On 28 January 2020, your criminal case was stayed after you accepted to enter into the State of [REDACTED] Military Diversion Program. The Board noted that the [REDACTED] pretrial diversion programs allow eligible defendants to avoid jail time by completing treatment and education courses. The Board determined that the allegation of spousal abuse was not unfounded or made in error. The Board also noted that the IDC determined that your case met the criteria for adult physical maltreatment to your spouse. The Board also determined that, although your completion of [REDACTED] Military Diversion Program resulted in the dismissal of your charges, the dismissal was solely based upon your successful completion of the program and the dismissal does not constitute an exoneration of your misconduct or a finding of not guilty in civil court. The Board further determined that your allegations of misconduct were valid and supported by sufficient evidence.

Concerning your contention that your 7 July 2020 page 11 entry is not required and is unnecessary, the Board noted that the MARCORPROMAN provides that when a Marine's promotion has been undelivered, the Marine must be afforded the opportunity to review the commander's recommendation and sign a statement affirming review of the commander's recommendation. The Board determined that your page 11 documents your review of the commander's recommendation and as such complies with the requirement of the MARCORPROMAN.

Concerning your contentions of reprisal, the Board found no evidence of reprisal and you provided none. 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. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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

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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,

[Redacted Signature]

Executive Director

[Redacted Title]