



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: 224-21
Docket No: 5356-21
Docket No: 5362-21
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 2 November 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 11 August 2021 decisions furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 23 April 2021 advisory opinions (AOs) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The PERB decisions and the AOs were provided to you on 11 August 2021, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 for remedial consideration for promotion to Master Sergeant (MSgt/E-8). You also request to remove or modify your fitness reports for the reporting periods 11 July 2016 to 31 December 2016 and 1 January 2017 to 23 October 2017 by changing your rank/grade to Gunnery Sergeant (GySgt/E-7). The Board considered your contentions that inaccurate information was visible to the USMC E-8 promotion board, your contested fitness reports were processed documenting your rank as Staff Sergeant (SSgt/E-6) due to an error that was corrected, and the error created an inaccurate picture of your career. You claim that the PERB approved the removal of an erroneous fitness report, on 4 June 2018, the Enlisted Remedial Selection Board approved your remedial promotion to GySgt, effective 1 August 2016. You also claim that you received your contested fitness reports in the grade SSgt and you believe that the lack of observation and portrayal of your career attributed to your failure to be selected for promotion to MSgt. You argue that you should not be held accountable for a

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mistake by others. You furnished correspondence from Headquarters Marine Corps (MMPR-2) as evidence that you requested remedial consideration for promotion to MSgt and your request was denied.

The Board, however, substantially concurred with the correspondence from MMPR-2 that remedial consideration for promotion to MSgt is not warranted. In this regard, the Board noted that your record was properly considered by the Fiscal Year 2020 E-8 promotion selection board, no additional corrections were made to your record following your approved remedial promotion, and you submitted supplemental material to the selection board for consideration. The Board determined that you were afforded the same opportunities available to similarly situated Marines and found no basis to grant remedial consideration for promotion to E-8.

The Board also substantially concurred with the PERB decisions and MMRP-30 AOs that your fitness reports should be retained as filed. The Board acknowledged the impact your remedial promotion had on your available fitness reports; however, the Board determined that your fitness reports are a matter of record and your performance history in this case cannot be altered. The Board noted that your paygrade during the contested reporting periods was a SSgt, accordingly, your reporting seniors observed and evaluated your performance against Marines of the same grade. The Board determined that a modification to your grade is not warranted and would not be an accurate representation of your performance during the reporting periods. The Board opined that the removal of your fitness reports would further reduce documented observation of your performance. 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 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,

11/23/2021

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Deputy Director

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