



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

█  
Docket No. 538-21  
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 applications on 8 July 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 25 February 2021 Advisory Opinion (AO) provided by the Manpower and Reserve Affairs Department Promotion Branch (MMPR-1). The AO was provided to you on 19 March 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 to adjust your date of rank in the grade of major, to remove your failures of selection, and to direct the convening of a special selection board (SSB). The Board considered your contention that upon your return to active duty, you were not counseled regarding career adjustments that would have afforded you the time to gain the necessary experience and performance evaluations prior to competing for promotion with those similar to your grade and experience. You argue that you were immediately put in a billet that did not allow observation time nor did the billet afford you time to gain the qualifications and experience that would make you competitive for promotion. You also assert that, due to not having a date of rank adjustment offered, no deferment of promotion eligibility, and being placed

in a billet that did not provide observation time, as well as the removal of a fitness report, and the deactivation of your unit, you only have substantial observation time/performance evaluations from 2018 to 2020.

The Board, however, substantially concurred with the AO and concluded that the requested relief is not warranted. In this regard, the Board noted that, on 10 November 2008, you voluntarily resigned your regular commission and were appointed in the Marine Corps Reserve. While in the Marine Corps Reserve, you were promoted to major with a date of rank of 1 April 2013. In 2015, you voluntarily applied for, and were selected for an active component appointment. You accepted your regular component appointment on 30 June 2015 and were assigned to a billet as a student at the [REDACTED]

The Board noted that Section 741 of Title 10, United States Code provides that the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W-5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience.

The Board also noted that, per MCO 1001.65 (Officer Retention and Prior Service Accessions), each Marine Corps reserve component officer [in the grade of major] recommended and approved for transfer to the active component shall be appointed as an active component officer in the same grade and with the same date of rank as the grade and date of rank that the officer would have held had the officer been serving on the active duty list as an active component officer on the date of regular appointment.

In view of the foregoing, the Board concluded that the Marine Corps complied with relevant policy regarding your return to active duty, and it was therefore not in error or unjust that you did not receive a date of rank adjustment upon your return to the active component.

Next, the Board noted that your first year on active duty was spent in a billet that generated a "not observed" academic fitness report. Even so, you had an additional year after that, and prior to your first in-zone consideration for promotion to lieutenant colonel, in order to gain experience and qualifications. Therefore, pursuant to SECNAV Instruction 1420.3, you were ineligible for deferment of eligibility by the Fiscal Year 2019 USMC Lieutenant Colonel Promotion Selection Board, which convened on 22 August 2017. The Board noted that, although your first "observed" fitness report since returning to active duty had been removed from your record by the Headquarters Marine Corps Performance Evaluation Review Board, the Board determined that you already received sufficient relief when previous Board panels removed a total of three failures of selection from your record, and granted you a SSB.

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,

7/22/2021



Executive Director

Signed by:

