



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. 1521-21
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 16 December 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 3 November 2021 Advisory Opinion (AO) provided by Headquarters Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 15 November 2021, and although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully considered your request to remove your 12 January 2011 Administrative Remarks (Page 11) 6105 counseling entry as well as your 20 January 2011 Page 11 counseling entry. The Board considered your contention that on 25 December 2010, you were arrested as a passenger in a vehicle and accused of drinking and driving, however, eight days later, you were found not guilty in civilian court and all charges were dismissed. You also contend that the two Page 11 entries should ultimately cancel each other out and the reason you chose not to submit an application earlier is because you believed the 20 January 2011 Page 11 entry would automatically void out the previous entry. Additionally, you contend that upon requesting reenlistment, you were informed that the Page 11 entries in question were used, in part, as a deciding factor on the retention board. You assert that up until this point in your career, the Page 11 entries have not been a factor in your career progression as you have been promoted twice and reenlisted twice since the incident. You further assert that the Page 11 entries are unwarranted and have been used throughout your career as a means to justify additional adverse actions against you.

The Board, however, substantially concurred with the AO that, given the presumption of regularity, the commanding officer (CO) was within his discretionary authority to issue you both Page 11 entries for your alcohol related incident despite you being found not guilty in civilian court. The CO determined that it was appropriate to issue you the counseling concerning your misconduct and both entries are written

and filed in accordance with the Marine Corps Separations Manual and Individual Records Administrative Manual.

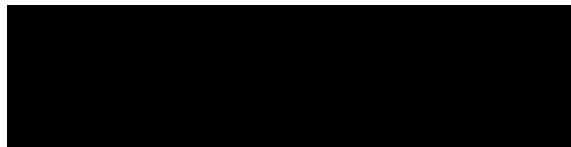
With regards to your contention that the derogatory material was used as a deciding factor in your most recent reenlistment request, the Board noted that your command leadership recommended disapproval of your request, based in part, most likely by your pattern of misconduct that occurred within your last contract. Specifically, your conviction at a Summary Court-Martial on 15 August 2019 for violation of a lawful general regulation and a Page 11 6105 counseling entry dated 18 March 2020 for making a false official statement. The Board thus concluded that your petition did not demonstrate probable material error, substantive inaccuracy, or injustice warranting removal of the contested Page 11 6105 counseling and associated Page 11 entry from your OMPF.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/7/2022

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Deputy Director

Signed by:

A black rectangular redaction box covering the name of the Deputy Director.