



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: 3660-21
Ref: Signature Date

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Dear █:

This is in reference to your reconsideration request for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. You previously petitioned the Board for Correction of Naval Records (Board) and were advised in the letter dated 8 March 2021 that your application was disapproved. 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 reconsideration request has been denied.

A three-member panel of the Board, sitting in executive session, considered your reconsideration request on 27 January 2022. 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.

On 26 August 2018, you were arrested for disturbing the peace after getting involved in an altercation on your neighbor's lawn while intoxicated. The local district attorney decided not to prosecute you for your alleged misconduct; however, your commanding officer (CO) decided to issue you an Administrative Remarks counseling entry on 20 September 2018. Your CO signed the counseling but you refused to sign the document or elect whether you would submit a rebuttal statement. On 20 February 2019, you were issued a second counseling entry for dereliction of duty based on a failure to refer a junior Marine to a Sexual Assault Response Coordinator after being approached about a possible sexual assault incident. Again, your CO signed the counseling but you refused to sign the document. On 19 August 2020, a legal officer from Headquarters Battalion, Marine Forces Reserve wrote a letter stating that the counseling entries you received violated Marine Corps Order 1900.16, Section 6105 since you were not counseled in person by your CO. This Board previously denied your request to remove the two counseling statements on 25 February 2021.

The Board carefully considered your request to remove the Administrative Remarks Page 11 6105 entries from your Official Military Personnel File (OMPF). You argue that you were not provided an opportunity to speak to your CO prior to being issued the counseling entries and that you were not provided an opportunity to submit a rebuttal statement. For this reconsideration request, you included letters from your from your Officer in Charge and Staff Non Commissioned Officer in Charge at the time of these incidents who endorse removing the counseling entries. You also included documents indicating when your counseling entries were submitted into your OMPF and documents showing that your CO was on leave on the dates of your counseling entries.

After reviewing the evidence in your case, the Board concluded that the preponderance of the evidence does not support relief. As stated in the previous decision letter, the Board found no requirement within Marine Corps Order 1900.16 that mandates an individual being counseled to speak to their CO or have the counseling issued in person by the CO. In fact, MCO 1900.16 states that the date of the page 11 entry is considered the date the Marine was counseled by the CO. The Board further considered that MCO 1070.12K, Marine Corps Individual Records Administration Manual (IRAM) paragraph 4006 1.e has a NOTE which states: "If the Marine refuses to acknowledge (sign) an adverse/derogatory entry, add the statement "Marine refuses to acknowledge this entry" at the bottom of the entry. By refusing to acknowledge the entry the Marine forfeits the opportunity to make a rebuttal statement." Finally, the Board considered the evidence from your Request for Mast on 14 February 2019. In that request, you raised the same arguments regarding the CO's failure to properly counsel you. In response, your CO stated your arguments regarding his refusal to speak to you were false and that he specifically recalled telling you to "to schedule an appointment with me to discuss this incident to which he responded with several excuses." Based on these factors, the Board concluded that you were properly counseled by your CO, on both occasions, in accordance with the applicable Marine Corps Orders. The Board thus determined that the contested entries were written and issued in accordance with the IRAM and concluded that there is no probable material error or injustice with respect to the counseling entries warranting removal from your record.

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,

2/9/2022



Executive Director

Signed by: 