



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

█  
Docket No. 3842-21  
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 23 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your 11 June 2015, 24 August 2015, and your 6 October 2015 Administrative Remarks (Page 11) counseling entries, and to restore your date of rank in the grade of Sergeant based on your "virtual" promotion. The Board considered your contention that the 11 June 2015 entry is in error because it states you are not eligible for promotion for the month of September due to appearance in front of the third quarter Board; however, the month of September falls in the fourth quarter in the Fiscal Year (FY) and September is the final month of the FY. You further contend you were never boarded in the fourth quarter. You assert that instead, you were promoted to the grade of sergeant virtually in Marine Online (MOL), and that the 24 August and 6 October 2015 entries revert your promotion back to corporal five days after your virtual promotion to sergeant. Additionally, you contend the verbiage used in the entries is erroneous. You assert that your supporting documentation shows you received legal action on 24 August 2015; however, that it does not state you are ineligible for promotion, or that your promotion should be halted.

The Board, however, determined that by signing the 24 August 2015 6105 counseling, your Commanding Officer indicated that he believed it to be appropriate based on the facts and circumstances, using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry, and that the entry met the 6105 counseling requirements detailed in the Marine Corps Separations Manual. Specifically, the Board noted that the entry provided written notification concerning your deficiencies, specific recommendations for corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to

successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. Although you were afforded the opportunity to rebut the counseling, you chose not to do so.

The Board noted that a 6105 counseling is given a presumption of regularity which requires you to provide substantial evidence that the commander's decision was unjust or was materially in error. The Board further noted that you did not provide evidence to rebut this presumption of regularity. The Board thus concluded that the 24 August 2015 Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from your record.

With regard to your contentions that the other Page 11 entries are erroneous, the Board determined they were appropriately issued in accordance with the Individual Records Administrative Manual (IRAM), albeit with minor administrative errors.

The Board noted that the decision to promote Marines to the grades of private first class through sergeant rests solely with commanders, and, in the opinion of commanders, a Marine will not be promoted if he or she is not capable of performing satisfactorily in the higher grade. With regard to your contention that you were promoted to the grade of sergeant virtually in MOL, the Board determined this was an administrative oversight, that your commander was authorized to revoke the promotion due to this administrative error, and the error was appropriately corrected in accordance with the Enlisted Promotion Manual. The Board further noted your promotion restriction is not in error as it was based on your lack of professionalism and your conviction by civilian authorities.

During the Board's review of your record, it was noted that your official military personnel file (OMPF) has a duplicate Page 11 entries. In accordance with Marine Corps policy, if you have two or more of the same documents in your OMPF, you may contact Headquarters, Marine Corps (MMRP-20) via e-mail (smb.manpower.mmrp@usmc.mil) to have the duplicate documents removed. In your e-mail, provide your full name and EDIPI, and specifically identify the document(s) and the folders in which the documents reside that are duplicates.

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,

12/13/2021

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Deputy Director

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