

DEPARTMENT OF THE NAVY

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

Docket No: 4014-21 Ref: Signature Date



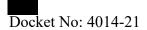
Dear Petitioner:

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 remove your 9 June 2009 Administrative Remarks (page 11) 6105 entry and rebuttal statement. You also request to remove your 12 August 2010 unit punishment book (UPB)/non-judicial punishments (NJP), promotion to Gunnery Sergeant (GySgt/E-7) and to have your awards updated accordingly. The Board considered your contention that you were eligible for promotion, but not recommended due to your NJP. You also contend that the corrections should be made based on your performance record throughout your career, you served 20 years without any issues, and you did not knowingly disrespect anyone. You claim that you took leave to attend a funeral, you called to request an extension, your command did not want to grant the extension, and it was a spur of the moment request.



The Board noted that pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry counseling you for failing to follow directions regarding account reconciliation, failing to meet established timelines, poor attitude, rude or untactful behavior towards supporting agencies, and substandard technical performance. The Board also noted that you acknowledged the counseling entry and elected not to submit a statement. The Board determined that the contested entry was written and issued according to the Marine Corps Individual Records Administration Manual (IRAM). Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry and determined that your misconduct was a matter essential to record, as it was his/her right to do.

The Board also noted that you received NJP for violating Article 92, Uniform Code of Military Justice (UCMJ), for not notifying the GySgt of your intent to take leave, for failing to keep him informed of your status, and for requesting a leave extension from a location five hours away approximately one hour before your leave expired. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and elected not to appeal your CO's finding of guilt at NJP. The Board found no evidence of irregularities that would invalidate your NJP and determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2009 ed.).

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board determined that your page 11 entry and NJP are valid, accordingly, the Board found no basis to grant consideration for promotion to GySgt or to update your awards. You also indicated in your application that you were the victim of sexual assault or harassment. The Board, however, determined that there was insufficient evidence to conclude that you were the victim of sexual assault or harassment in violation of 10 USC § 1561. 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

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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.

